



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 20 सितम्बर, 2018 / 29 भाद्रपद, 1940

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

*Shimla-2, the 4th June, 2018*

**No. Shram (A) 6-2/2018 (Awards).**—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment, Government of Himachal Pradesh :—

Sl. No.	Ref./Application	Title	Section
1.	Ref. 28/2018	Tilak Raj V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur & Anr.	10
2.	Ref. 29/2018	Tikam Ram V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur & Anr.	10
3.	Ref. 52/2018	Rajinder Singh V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur.	10
4.	Ref. 49/2018	Neelam Kumar V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur.	10
5.	Ref. 50/2018	Tara Chand V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur.	10
6.	Ref. 30/2018	Subhash Chand V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur & Anr.	10
7.	Ref. 25/2016	Khor Singh V/s M/s Patel Engineering Ltd & Anr.	10
8.	Ref. 144/2017	Mani Ram V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur.	10
9.	Ref. 23/18	Rakesh Kumar V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur.	10
10.	Ref. 48/2018	Vikram Singh V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur.	10
11.	Ref. 145/17	Sameer Chand V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur.	10
12.	Ref. 146/17	Ganeshi Lal V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur.	10
13.	Ref. 51/18	Sh. Padam Chand V/s M/s Patel Engineering Ltd. Shongtong, Kinnaur.	
14.	Ref. 152/17	Meenakshi Devi V/s Maharishi Markandeshwar Medical College, Solan.	10
15.	Ref. 153/17	Babli V/s Maharishi Markandeshwar Medical College, Solan.	10
16.	Ref. 126/16	Sanjay Kumar V/s Maharishi Markandeshwar Medical College, Solan.	10
17.	Ref. 124/16	Sanjay Kumar V/s Maharishi Markandeshwar Medical College, Solan.	10
18.	Ref. 125/16	Nitish Kumar V/s Maharishi Markandeshwar Medical College, Solan.	10

19.	Ref. 116/16	Vikrant Thakur V/s M/s Su-Kam Power Systems Ltd. Nalagarh.	10
20.	Ref. 53/2017	Employees Union V/s M/s Pronto Steering Ltd.	10
21.	Ref. 63/2012	Parkash Chand V/s The Divisional Forest Officer, Reckong Peo, Distt. Kinnaur.	10
22.	Ref. 6/2017	Roshan Lal V/s The Engineer-in-Chief, IPH, Shimla & Ors.	10
23.	Ref. 5/17	Mehar Singh V/s The Engineer-in-Chief, IPH, Shimla & Ors.	10
24.	Ref. 89/2016	Yagya Dutt V/s Geeta Adarsh Vidyalya, Solan	10
25.	Ref. 85/2015	Sita Devi V/s Geeta Adarsh Vidyalya Solan & Anr.	10
26.	Ref. 81/2016	Smt. Usha V/s Mohan Geeta Adarsh Vidyala Solan	10
27.	Ref. 23/14	Vikram Singh & Ors. V/s M/s Indo Farm Equipment Ltd. Baddi & Ors.	10
28.	Ref. 58/13	Ashwani Kumar V/s M/s Time Techno Plast Ltd. Dharampur, Thana Baddi, District Solan.	10
29.	Ref. 30/2015	Tarsem Lal V/s M/s Indo Farm Equipment Ltd.	10
30.	Ref. 63/15	Rajeev Kumar Songra V/s M/s Super Multi Colour Printers (P) Ltd., Village Kishanpura, Tehsil Baddi, District Solan, H.P.	10
31.	Ref. 35/2015	Sh. Sita Ram & Ors. V/s N.N. Geeta Adarsh Vidyalya, Solan and Another.	

By order,  
NISHA SINGH, IAS,  
Addl. Chief. Secretary (Lab. & Emp.).

#### 5.4.2018

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

As per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.30 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
Presiding Judge,  
Labour Court, Shimla.

**Case called again**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 12.35 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,  
Labour Court, Shimla.*

**Case called after lunch**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 3.39 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether dismissal/termination of service of Shri Tilak Raj s/o Sri Chatro Ram, r/o Village Khaloh, P.O. Bhajtra, Tehsil Bhalei, Distt. Chamba, H.P. by (i) The Manager, M/s Mujjamil Engineering Works, Village Mohiuddinpur, P.O. Kailashpur, Distt. Saharanpur, U.P. C/o M/s Patel Engineering Ltd. Shongthog-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (Sub-Contractor) & (ii) the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (Contractor) w.e.f. 14-3-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that w.e.f. 14-3-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that w.e.f. 14-3-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
5.4.2018.

Sd/-  
(SUSHIL KUKREJA),  
*Presiding Judge,  
Labour Court, Shimla.*

**5.4.2018**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondents

As per the acknowledgement which has been received back and as per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.45 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called again**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondents

It is 12.55 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called after lunch**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondents

It is 3.40 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per acknowledgement received back and as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether dismissal/termination of services of Shri Tikam Ram s/o Shri Joge Ram, r/o Village Sanda, P.O. Mohini, Tehsil Banjar, Distt. Kullu, H.P. by (i) The Manager, M/s Mujjamil Engineering Works, Village Mohiuddinpur, P.O. Kailashpur, Distt. Saharanpur, U.P. C/o M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P.(Sub-Contractor) & (ii) The General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (Contractor) w.e.f.**

**14-3-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"**

From the aforesaid reference, it is clear that *w.e.f.* 14-3-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that *w.e.f.* 14-3-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
5.4.2018

Sd/-  
(SUSHIL KUKREJA),  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**5.4.2018**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

As per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.42 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called again**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 12.50 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

**Case called after lunch**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 3.42 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether termination of the services of Shri Rajinder Singh s/o Shri Sita Ram, r/o Village & P.O Kared Dhanwan, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 21-9-2016 by the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P., without complying with the provision of Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that w.e.f. 21-9-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that w.e.f. 21-9-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
5.4.2018

Sd/-  
(SUSHIL KUKREJA),  
*Presiding Judge,*  
*Labour Court, Shimla.*

**5.4.2018**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

As per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.45 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

**Case called again**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 12: 2 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

**Case called after lunch**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 3.45 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether termination of the services of Shri Neelam Kumar s/o Shri Chet Ram, r/o Village Hawani, P.O. Rewalsar, Tehsil Sadar Mandi, District Mandi, H.P. w.e.f. 30-3-2016 by the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P., without complying with the provision of Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that w.e.f. 30-3-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that w.e.f. 30-3-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
5.4.2018

Sd/-  
(SUSHIL KUKREJA),  
*Presiding Judge,*  
*Labour Court, Shimla.*



**5.4.2018**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

As per the acknowledgement which has been received back and as per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.50 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called again**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 12.38 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called after lunch**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 3.52 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per acknowledgement received back and as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether termination of the services of Shri Tara Chand s/o Shri Nar Kumar, r/o, Village & P.O. Khawangi, Tehsil Kalpa, District Kinnaur, H.P. w.e.f. 21-9-2016 by the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, District Kinnaur, H.P., without complying with the provision of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that *w.e.f.* 21-9-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that *w.e.f.* 21-9-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

5.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**5.4.2018**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

As per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.32 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called again**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 12.34 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called after lunch**

*Present :* None for the petitioner

Shri Naresh Sharma, Advocate for respondent

It is 3.34 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether dismissal/termination of services of Shri Subhash Chand s/o Shri Jagdish Chand, r/o Village Kulthima, P.O. Rajpur, Tehsil Paonta Sahib, Distt. Sirmour, H.P. by (i) M/s Muggamil Engineering Works, Village Mohiuddinpur P.O Kailashpur District Sahranpur UP C/o M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (Sub-Contractor) & (ii) the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (Contractor) w.e.f. 14-3-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that w.e.f. 14-3-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that w.e.f. 14-3-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

5.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**5.4.2018**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

As per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.38 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

**Case called again**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 12.28 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

**Case called after lunch**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 3.25 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether dismissal/termination of services of Shri Khor Singh s/o Shri Thape Ram, r/o Village Khancha, P.O. Mohani, Tehsil Banjar, Distt. Kullu, H.P. by (i) The Manager, Saharanpur, U.P. C/o M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (Sub-Contractor) & (ii) the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. (Contractor) w.e.f. 14.3.2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that w.e.f. 14-3-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that w.e.f. 14-3-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
5.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**4.4.2018**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

As per track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.40 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,  
Labour Court, Shimla.*

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**Case called again**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 12.50 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,  
Labour Court, Shimla.*

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**Case called after lunch**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 3.35 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether termination of services of Shri Mani Ram s/o Shri Ralu Ram, r/o Village Anas, P.O. Nither, Tehsil Nirmand, Distt. Kullu, H.P. by the General Manager, M/s Patel Engineering Ltd. Shongthong Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 21-9-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that *w.e.f.* 21-9-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that *w.e.f.* 21-9-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
4.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**5.4.2018**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondents

The notice issued for the service of the petitioner through registered post has been received back with the report that the petitioner has refused to accept the same. Hence, it is presumed that the petitioner is duly served. It is 10.57 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called again**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondents

It is 12.37 PM. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called after lunch**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondents

It is 3.57 P.M. The notice issued to the petitioner through registered post has been received back with the report that the petitioner has refused to accept the same. Hence, it is presumed that the petitioner is duly served. Case called repeatedly in pre and post lunch sessions but despite having been served the petitioner has failed to appear before this Court which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether dismissal/termination of services of Shri Rakesh Kumar s/o Late Shri Nand Lal, r/o Village Bagla, P.O. Nagchala, Tehsil Sadar, Distt. Mandi, H.P. by the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 30-3-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that w.e.f. 30-3-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that w.e.f. 30-3-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
5.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**5.4.2018**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

As per the acknowledgement which has been received back and as per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.35 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

**Case called again**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 12.30 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

**Case called after lunch**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 3.30 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per acknowledgement received back and as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether termination of the services of Shri Vikram Singh s/o Shri Geeta Ram, r/o Village Shudarang, P.O. Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 21-9-2016 by the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, District Kinnaur, H.P., without complying with the provision of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that w.e.f. 21-9-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that w.e.f. 21-9-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
5.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*



**4.4.2018**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

As per the acknowledgement which has been received back and as per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.45 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called again**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 12.55 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called after lunch**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 3.40 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per acknowledgement received back and as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether termination of services of Shri Sameer Chand s/o Shri Deva Singh, r/o Village & P.O. Khawangi, Tehsil Kalpa, Distt. Kinnaur, H.P. by the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 26-3-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that *w.e.f.* 26-3-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that *w.e.f.* 26-3-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

4.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**4.4.2018**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

As per the acknowledgement which has been received back and as per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.35 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called again**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 12.45 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

---

**Case called after lunch**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 3.45 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per the acknowledgement received back and as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether termination of services of Shri Ganeshi Lal s/o Shri Sewa Sukh, r/o Village & P.O. Khawangi, Tehsil Kalpa, Distt. Kinnaur, H.P. by the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, Distt. Kinnaur, H.P. w.e.f. 26-3-2016, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that w.e.f. 26-3-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that w.e.f. 26-3-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:

4.4.2018

Sd/-  
(SUSHIL KUKREJA)  
Presiding Judge,  
Labour Court, Shimla.

5.4.2018

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

As per the acknowledgement which has been received back and as per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 11.00 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
Presiding Judge,  
Labour Court, Shimla.

**Case called again**

*Present :* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 12.34 P.M. Case called again but neither the petitioner nor any counsel on his behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

**Case called after lunch**

*Present:* None for the petitioner  
Shri Naresh Sharma, Advocate for respondent

It is 3.55 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by him appeared before this Court despite the fact that as per acknowledgement received back and as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that at present the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether termination of the services of Shri Padam Chand s/o Shri Daulua Ram r/o Village Kafour, P.O. Chaura, Tehsil Nichar, Distt. Kinnaur, H.P. w.e.f. 30-3-2016 by the General Manager, M/s Patel Engineering Ltd. Shongthong-Karchham Hydro Electric Project, Reckong Peo, Tehsil Kalpa, District Kinnaur, H.P., without complying with the provision of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that w.e.f. 30-3-2016, the petitioner has alleged his termination to be illegal and unjustified but despite having been duly served, he has failed to appear before this Court and to file statement of claim in support of his contention arising out of reference. There is no material on record/file which could go to show that w.e.f. 30-3-2016, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
5.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**21.4.2018**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR for respondent

As per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.43 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
Presiding Judge,  
Labour Court, Shimla.

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**Case called again**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR for respondent

It is 12.34 P.M. Case called again but neither the petitioner nor any counsel on her behalf appeared before this Court. Be called after lunch.

Sd/-  
Presiding Judge,  
Labour Court, Shimla.

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**Case called after lunch**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR Advocate for respondent

It is 3.30 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by her appeared before this Court despite the fact that as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that the petitioner is not interested to pursue her case arising out of the present reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether termination of services of Ms. Meenakshi Devi d/o Shri Kamal Jeet, V.P.O. Sultanpur, Tehsil & Distt. Solan, H.P. by the Registrar, Maharishi Markendeshwar Medical Collage and Hospital, Village Lado, P.O. Sultanpur, Tehsil & Distt. Solan, H.P. w.e.f. 11.7.2015 through oral orders, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that *w.e.f.* 11-7-2015, the petitioner has alleged her termination to be illegal and unjustified but despite having been duly served, she has failed to appear before this Court and to file statement of claim in support of her contention arising out of reference. There is no material on record/file which could go to show that *w.e.f.* 11-7-2015, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, in the absence of any material on record, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
21.4.2018

Sd/-  
SUSHIL KUKREJA,  
*Presiding Judge,*  
*Labour Court, Shimla.*

---

**21.4.2018**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR for respondent

As per the track consignment report, the notice issued for the service of the petitioner through registered post has been duly served. It is 10.38 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called again**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR for respondent

It is 12.28 P.M. Case called again but neither the petitioner nor any counsel on her behalf appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called after lunch**

*Present :* None for the petitioner  
Shri Mohit Gupta, AR Advocate for respondent

It is 3.25 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor any Advocate authorized by her appeared before this Court despite the fact that as per the Track Consignment report the notice issued for the service of the petitioner through registered post had been duly served which clearly shows that the petitioner is not interested to pursue her case arising out of the present reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether termination of the services of Babli s/o Shri Mast Ram, Village Kothi, P.O. Hanuman Barog, Tehsil Arki, Distt. Solan, H.P. by the Registrar, Maharishi Markendeshwar Medical College and Hospital, Village Lado, P.O. Sultanpur, Tehsil & Distt. Solan, H.P. w.e.f. 15.7.2015 through oral orders, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that w.e.f. 15-7-2015, the petitioner has alleged her termination to be illegal and unjustified but despite having been duly served, she has failed to appear before this Court and to file statement of claim in support of her contention arising out of reference. There is no material on record/file which could go to show that w.e.f. 15-7-2015, the services of the petitioner have been terminated illegally without complying with the provisions of Industrial Disputes Act, 1947. Hence, in the absence of any material on record, this Court is left with no other alternative but to answer the reference against the petitioner and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
21.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**21.4.2018**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR for respondent

Case called twice but none appeared on behalf of the petitioner. It is 10.45 A.M. Be awaited.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**Case called again**

*Present :* None for the petitioner  
Shri Mohit Gupta, AR for respondent

Case called again but none appeared on behalf of the petitioner. It is 12.35 P.M. Be called after lunch.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**Case called after lunch**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR for respondent

It is 3.30 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his counsel appeared before this Court despite the fact that *w.e.f.* 12-1-2017 the case is being listed for filing of claim on behalf of petitioner and in order to file the same, the petitioner has availed more than twelve opportunities and more than one year but he has failed to file any claim. Not only this, today neither the petitioner nor his counsel appeared before this Court which clearly shows that the petitioner is not interested to pursue his case arising out of the present reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

**“Whether termination of the services of Shri Sanjay (Sanjiv) Kumar s/o Shri Kishan Singh, r/o Village Jabhog, P.O. Sultanpur, Tehsil & Distt. Solan, H.P. through Shri J.C. Bhardwaj, President, H.P-AITUC, H.Q. Saproon, Distt. Solan, H.P. who was working as Lift Operator, by the Principal, Maharishi Markendeshwar Medical College and Hospital, Village Lado, P.O. Sultanpur, Tehsil & Distt. Solan, H.P. *w.e.f.* 17-11-2014 through oral orders, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back-wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

From the aforesaid reference is the clear that the petitioner has alleged his termination *w.e.f.* 17-11-2014 without complying with the provisions of the Industrial Disputes Act, 1947 to be illegal and unjustified but despite having availed twelve opportunities in order to file the claim he has failed to appear before this Court and also failed to file any statement of claim. There is no material on record to suggest that the termination of the services of the petitioner is either illegal or unjustified. Therefore, in view of the aforesaid facts and also in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent *w.e.f.* 17-11-2014. Hence, the reference is answered in favour of the respondent and against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the



appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
21.4.2018

Sd/-  
SUSHIL KUKREJA,  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**21.4.2018**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR for respondent

Case called twice but none appeared on behalf of the petitioner. It is 10.40 A.M. Be awaited.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

---

**Case called again**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR for respondent

Case called again but none appeared on behalf of the petitioner. It is 12.40 P.M. Be called after lunch.

Sd/-  
SUSHIL KUKREJA,  
*Presiding Judge,*  
*Labour Court, Shimla.*

---

**Case called after lunch**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR for respondent

It is 3.35 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his counsel appeared before this Court despite the fact that *w.e.f.* 12-1-2017 the case is being listed for filing of claim on behalf of petitioner and in order to file the same, the petitioner has availed more than twelve opportunities and more than one year but he has failed to file any claim. Not only this, today neither the petitioner nor his counsel appeared before this Court which clearly shows that the petitioner is not interested to pursue his case arising out of the present reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

**“Whether termination of the services of Shri Sanjay Kumar s/o Shri Inder Singh, r/o Village Kalol, P.O. Kumarhatti, Tehsil & Distt. Solan, H.P. who was working as Lift Operator, by the Principal, Maharishi Markendeshwar Medical College and Hospital, Village Lado, P.O. Sultanpur, Tehsil & Distt. Solan, H.P. w.e.f. 17-11-2014 through oral orders, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

From the aforesaid reference is the clear that the petitioner has alleged his termination w.e.f. 17-11-2014 without complying with the provisions of the Industrial Disputes Act, 1947 to be illegal and unjustified but despite having availed twelve opportunities in order to file the claim he has failed to appear before this Court and also failed to file any statement of claim. There is no material on record to suggest that the termination of the services of the petitioner is either illegal or unjustified. Therefore, in view of the aforesaid facts and also in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent w.e.f. 17-11-2014. Hence, the reference is answered in favour of the respondent and against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:

21.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**21.4.2018**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR for respondent

Case called twice but none appeared on behalf of the petitioner. It is 10.50 A.M. Be awaited.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**Case called again**

*Present :* None for the petitioner  
Shri Mohit Gupta, AR for respondent

Case called again but none appeared on behalf of the petitioner. It is 12.50 P.M. Be called after lunch.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called after lunch**

*Present:* None for the petitioner  
Shri Mohit Gupta, AR for respondent

It is 3.40 P.M. Case called repeatedly in pre and post lunch sessions but neither the petitioner nor his counsel appeared before this Court despite the fact that *w.e.f.* 12-1-2017 the case is being listed for filing of claim on behalf of petitioner and in order to file the same, the petitioner has availed more than twelve opportunities and more than one year but he has failed to file any claim. Not only this, today neither the petitioner nor his counsel appeared before this Court which clearly shows that the petitioner is not interested to pursue his case arising out of the present reference. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whichever is available on file.

The following reference has been received from appropriate government for adjudication:

**“Whether termination of the services of Shri Nitish Kumar s/o Shri Karam Chand, r/o Village Kathed, P.O. Chambaghat, Tehsil & Distt. Solan, H.P., who was working as Lift Operator by the Principal, Maharishi Markendeshwar Medical College and Hospital, Village Lado, P.O. Sultanpur, Tehsil & Distt. Solan, H.P. *w.e.f.* 17-11-2014 through oral orders, without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

From the aforesaid reference is the clear that the petitioner has alleged his termination *w.e.f.* 17-11-2014 without complying with the provisions of the Industrial Disputes Act, 1947 to be illegal and unjustified but despite having availed twelve opportunities in order to file the claim he has failed to appear before this Court and also failed to file any statement of claim. There is no material on record to suggest that the termination of the services of the petitioner is either illegal or unjustified. Therefore, in view of the aforesaid facts and also in the absence of any material on record, it cannot be said that the services of the petitioner had been illegally terminated by the respondent *w.e.f.* 17-11-2014. Hence, the reference is answered in favour of the respondent and against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced:  
21.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**10.4.2018**

*Present:* None for the petitioner  
Shri Rajiv Sharma, Advocate for respondent

It is 10.45 A.M. Case called twice but none appeared on behalf of the petitioner. Be awaited.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**Case called again**

*Present:* None for the petitioner  
Shri Rajiv Sharma, Advocate for respondent

It is 12.30 P.M. Case called again but neither the petitioner nor his counsel appeared before this Court. Be called after lunch.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla.*

---

**Case called after lunch**

*Present :* None for the petitioner  
Shri Rajiv Sharma, Advocate for respondent

It is 3.30 P.M. Case called repeatedly in pre and post lunch sessions. For today, the case has been listed for the evidence of the petitioner but neither the petitioner nor his counsel had appeared before this Court which clearly shows that the petitioner is not interested to pursue his case arising out of the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether the termination of the services of Shri Vikrant Thakur, r/o Thakur Bhawan, Middle Sangti, Summerhill, Shimla-171005, H.P., who was employed as Assistant Engineer, drawing wages Rs. 12,000/- per month, by the Factory Manager, Su-Kam Power Systems Ltd., Plot No.7, Apparel Park-cum-Industrial Area, Katha, Baddi, District Solan, H.P. (Corporate Office at Plot No. 54, Udyog Vihar, Phase-VI, Sector-37, Gurgaon-122001) w.e.f. 18-12-2015 without following the provisions of the Industrial Disputes Act, 1947, as alleged, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above exworker is entitled to from the above employers/management?”**

In support of his case, on 13.6.2017, the petitioner has filed the statement of claim wherein he has alleged his termination without complying with the provisions of the Industrial Disputes

Act, 1947 to be illegal and unjustified and prayed that the respondent company be directed to reengage him by awarding compensation approximately 30 lakhs. By filing detailed reply on 18-7-2017, the respondent company denied the allegations made in the claim petition and prayed for the dismissal of the claim petition. Thereafter this Court *vide* order dated 26.2.2018 framed the following issues.

- (1) Whether the termination of the services of the petitioner by the respondent *w.e.f.* 18-12-2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP.*
- (2) If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled? . . .*OPP.*
- (3) Whether the petition is not maintainable as alleged? . . .*OPR.*

To prove the aforesaid issues, the petitioner was allowed to lead evidence. The case was fixed today for the evidence of the petitioner. However, he has failed to appear before this Court today and has also failed to lead any evidence which could show that the termination of the services of the petitioner by the respondent *w.e.f.* 18.12.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified. Therefore, in the absence of any evidence on record, it cannot be said that the services of the petitioner have been terminated illegally without complying with the provisions of the Industrial Disputes Act. Accordingly, issue no.1 is decided in favour of the respondent and against the petitioner. Since, the petitioner has failed to prove issue no.1 above, issue no. 2 becomes redundant. As far as the issue no.3 is concerned, the present claim petition has been filed by the petitioner pursuant to the reference sent by the appropriate government to this Court for adjudication, hence, it cannot be said that the petition is not maintainable. Accordingly, issue no. 3 is decided in favour of the petitioner and against the respondent. Therefore, in view of the above discussion and in the absence of any evidence on record, it cannot be said that the termination of the services of the petitioner by the respondent *w.e.f.* 18.12.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified and as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
10.4.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**7.4.2018**

*Present : None*

As per the track consignment reports, the notices issued for the service of the parties through registered post have been duly served. Case called repeatedly but none appeared on behalf of the petitioner as well as respondent. The perusal of record reveals that the notices have been issued repeatedly for the service of the petitioner union but none has appeared on behalf of the petitioner union despite the fact that it has been duly served through registered post for today which clearly shows that at present the petitioner union is not interested to pursue this case arising out of

the reference sent by the appropriate government to this Court for adjudication. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

**“Whether declaration of lock-out by the Factory Manager/Employer M/s Pronto Steering Employees Union, Plot No. 3, 4, 5, Sector-5, Parwanoo, District Solan, H.P. during December 2014 as per demand notice dated 18-12-2014 and letter dated 30-4-2015 of the President and General Secretary, Pronto Steering Employees Union, Plot No. 3, 4, 5, Sector-5, Parwanoo, District Solan, H.P. (copies enclosed) is legal and justified? If not, what amount of back-wages, reinstatement, seniority, past service benefits or other monetary benefits the aggrieved workers are entitled to from the above employer/management?”**

From the aforesaid reference, it is clear that the workers union of petitioner has alleged declaration of lock-out by the respondent during December, 2014 as per demand notice dated 18-12-2014 and letter dated 30-4-2015 of petitioner, to be illegal and unjustified but despite having been duly served, none has appeared on behalf of petitioner union before this Court and to file statement of claim in support of their contention arising out of reference. There is no material on record/file which could go to show that the lock-out declared by the respondent company during December 2014 is illegal and unjustified. Hence, this Court is left with no other alternative but to answer the reference against the petitioner union and as such the reference is answered against the petitioner union and the award is passed accordingly. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:  
7.4.2018

Sd/-  
SUSHIL KUKREJA,  
*Presiding Judge,*  
*Labour Court, Shimla,*  
*Camp at Solan.*

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. : 63 of 2012  
Instituted on : 5-9-2012  
Decided on : 12-4-2018

Parkash Chand son of Shri Punnu Ram, r/o Village Randoul, P.O. Tatapani, Tehsil Karsog,  
Distt. Mandi, H.P. . . . *Petitioner.*

*VS.*

The Divisional Forest Officer, Reckong Peo, Distt. Kinnaur, H.P. . . . *Respondent.*

**Reference under section 10 of the Industrial Disputes Act, 1947**

*For petitioner* : Shri Ashwani Kumar Gupta, Advocate  
*For respondent* : Shri Mahender Singh, ADA

### AWARD

The reference for adjudication, sent by the appropriate government, is as under:

**“Whether the termination of services as Driver of Shri Parkash Chand s/o Shri Punnu Ram, r/o Village Randoul, P.O. Tatapani, Tehsil Karsog, District Mandi, H.P. by the Divisional Forest Officer Division, Kinnaur at Reckong-Peo, District Kinnaur, H.P. w.e.f. December 2009 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, to what amount of back wages, seniority, past service benefits and compensation the above ex-driver is entitled to from the above employer?”**

2. Briefly, the case of the petitioner is that during the month of Feb. 2008 he was employed as driver on daily waged basis by the respondent and he remained as such till December 2009 when he was removed from the job without compliance of statutory and mandatory provisions of section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) It is further stated that the petitioner had worked with the respondent department for more than 240 days during the preceding calendar year and his services were orally terminated whereas junior/fresh persons have been retained/engaged who have been given all kind of benefits and it is only the petitioner who belongs to a poor strata of the society was terminated from service which is not sustainable in the eyes of law. It is also stated that during the entire service tenure the petitioner was never served with any explanation call, show cause notice and warning letter as such his work and conduct remained excellent. That the petitioner is unemployed since the date of his illegal retrenchment and shall remain so in future also. That the petitioner never abandoned the services of the department and such plea cannot be judiciously noticed as there was no service of any notice and no chargesheet was served upon him. Against this back-drop a prayer has been made that the petitioner be ordered to be placed back in the service as daily wage driver with seniority and full back-wages and his removal from service be declared null, void and inoperative.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been that qua maintainability, that the petitioner was neither terminated nor retrenched, that the petition is time barred and concealment of material facts. On merits, it has been asserted that the petitioner was engaged as driver on bill basis during the period w.e.f. 2-5-2008 to 31-8-2008 purely on stop gap arrangement basis due to proceeding on long leave on medical grounds by regular driver and since the petitioner had not completed 180/240 days in each calendar year during 2008 and 2009, hence, the provisions of section 22-B, 25-G, 25-H, 25-K and 25-N of the Act are not applicable in the instant case. The respondent prayed for the dismissal of the claim petition.

4. Rejoinder not filed. On the pleadings of the parties, the following issues were framed on 23.10.2013 :—

- (1) Whether the services of the petitioner were illegally terminated w.e.f. December 2009 without complying with the provisions of the Industrial Disputes Act, 1947 as alleged? . . .OPP.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .OPP.

- (3) Whether the petition is not maintainable as alleged in preliminary objections no. 1&2? . . . *OPR*.
- (4) Relief.
- (5) I have heard the learned counsel for the petitioner and learned ADA for respondent and have also gone through the record of the case.
- (6) For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue No. 1 : No

Issue No. 2 : Becomes redundant

Issue No. 3 : No

Relief : Reference answered against the petitioner per operative part of award.

### REASONS FOR FINDINGS

*Issue No. 1 :*

7. To prove his case, the petitioner examined six PWs. PW-1 Shri Kaam Raj deposed that as per the record vehicle No. HP 06-0128 was being driven by Prem Chand. He further deposed that as per the log book Prem Chand used to drive the aforesaid vehicle *w.e.f.* 1-5-2008 to 29-1-2010. He also tendered in evidence the copy of RTI application Ex. PW-1/A and the certified copy of the bills Ex. PW-1/B-1 to Ex. PW-1/B-24. He also produced the certified copies of the original log book Ex. PW-1/B-25 to Ex. PW-1/B-99.

8. PW-2 Shri Satya Pal deposed that the petitioner had applied under RTI Act to get the record the copy of which is Ex. PW-2/A. He also produced bills of Tribal Bhawan Dhalli Ex. PW-2/A-2 to Ex. PW-2/A-18. He further deposed that the driver of vehicle No. HP 25-A 0304 was Prakash Chand.

9. PW-3 Shri Prem Chand deposed that he used to drive the vehicle No. HP 25-A 0304 from November 2007 till April 2008 and thereafter he used to drive vehicle No. HP 06 0128 from May 2008. He further deposed that the petitioner Prakash Chand used to drive the vehicle No. HP 25-A 0304 from November 2008 to December 2009.

10. PW-4 Rajinder Sharma deposed that the petitioner had applied for log book detail under RTI Act the copy of which is Ex. PW-4/A. He also produced the record of log book Ex. PW-4/A-1 to Ex. PW-4/A-64.

11. PW-5 Muker Singh deposed that the petitioner Prakash Chand was working as driver at DFO office Reckong Peo *w.e.f.* Feb. 2008 to December 2009 and he used to drive vehicle No. HP 25-A 0304. He also produced pay bills Ex. PW-5/A-1 to Ex. PW-5/A-8 and the patrol bills Ex. PW-5/B-1 to Ex. PW-5/B-44. He further produced patrol bills Ex. PW-5/C-1 to Ex. PW-5/C-102.

12. The petitioner stepped into the witness box as PW-6 to depose that he had worked as daily wager driver at the office of DFO Reckong Peo *w.e.f.* Feb. 2008 to December 2009. He further deposed that he had worked as daily wager driver for more than 240 days in a calendar year. He also deposed that in December 2009, his services were terminated without issuance of any



notice and after his termination fresh drivers have been engaged and juniors have been retained. He also deposed that he used to drive Vehicle No. HP 25-A 0304 as the driver Jai Singh had gone on long medical leave. He further stated that he used to come on official tour along-with DFO Reckong Peo and during this period he used to stay at Tribal Bhawan, Dhalli. He tendered in evidence the record obtained by him under RTI Act. The copy of application filed under RTI Act is Ex. PW-2/A and report regarding stay at Tribal Bhawan is Ex. PW-2/A-1 and the bill receipts are Ex. PW-2/A-2 to Ex. PW-2/A-18. In cross-examination he denied that he was engaged on bill basis in place of regular driver who had gone on leave. He further denied that *w.e.f.* 2-5-2008 to 31-8-2008 he was engaged as a stop gap arrangement. He admitted that the regular driver of vehicle No. 25-A 0304 was Jai Singh and the other driver was Prem Chand. He admitted that in the log book Ex. PW-1/A-1 to Ex. PW-1/A-64 the name of driver has not been mentioned. He also admitted that on the bills Ex. PW-1/B-1 to Ex. PW-1/B-24, the name of driver Prem Chand has been mentioned but the vehicle number has not been mentioned.

13. On the other hand, the respondent has examined one Shri Naresh Kumar, Junior Assistant from the office of DFO Kinnaur as RW-1 who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply filed by the respondent. He also tendered in evidence authority letter Ex. RW-1/B, the mandays chart of the petitioner Ex. RW-1/C, revised written statement and justification of work done by other drivers during leave period of Shri Jai Singh, Driver Ex. RW-1/D and earned leave and medical leave of Jai Singh Driver Ex. RW-1/E. In cross-examination, he admitted that vehicle No. HP 25-A-0304 was transferred to Renukaji, Forest Division in the year 2010. He further admitted that the pay bills of Driver Prem Chand shows that he remained with vehicle No. HP 06-0128 *w.e.f.* Feb. 2008 till Jan. 2010 and log book of the above said vehicle remained with DFO Cat Plan Nichar at Rampur in the aforesaid period. He denied that they have deliberately concealed the records of daily wage driver Shri Prakash Chand (petitioner) *w.e.f.* September 2008 to December 2009.

14. I have closely scrutinized the entire evidence on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as a driver purely on stop gap arrangement basis *w.e.f.* 2-5-2008 to 31-8-2008 due to the proceeding on long leave on medical grounds by the regular driver. This fact has also been admitted by the petitioner in his examination-in-chief as PW-6 that he used to drive Vehicle No. HP 25-A 0304 as the regular driver Jai Singh had gone on long medical leave. In cross-examination also he admitted that Jai Singh was the regular driver of vehicle No. HP 25-A 0304. He further admitted that in the log book Ex. PW-4/A-1 to Ex. PW-4/A-64 the name of driver has not been mentioned. PW-3 also admitted in cross-examination that the petitioner was engaged as a stop gap arrangement as the regular driver Shri Jai Singh had gone on leave. Therefore, from the aforesaid evidence, it is clear that the petitioner was engaged as driver by the respondent during the leave period of regular driver of the respondent as a stop gap arrangement. Moreover, no appointment letter has been produced on record by the petitioner to prove the fact that he was engaged as a regular driver by the respondent department. It is not disputed that the petitioner was engaged in a Tribal Area and the mandatory period of 240 days in a calendar year in Tribal Area has been reduced to 180 days. The case of the petitioner is that he had completed 180 days in each calendar year and in twelve calendar months preceding his termination but in support thereof he has failed to place on record any cogent and satisfactory evidence which could go to show that the petitioner had completed 180 days in each calendar year and in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 in case titled as RelipNagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

***“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”***

In *AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh*, the Hon'ble Supreme Court has held that:—

***“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. However, in the instant case, the petitioner has failed to prove on record that he had put in 180 days in each calendar year and in twelve calendar months preceding his termination as required in the Tribal Area. There is no *iota* of evidence which could go to show that the petitioner had completed 180 working days in each calendar year and in twelve calendar months preceding his termination. Rather, the perusal of mandays chart Ex. RW-1/C goes to show that *w.e.f.* 2-5-2008 to 31-8-2008, the petitioner had worked only for 120 days with the respondent department. No satisfactory evidence has been led by the petitioner to contradict the muster roll Ex. RW-1/C tendered in evidence by the respondent. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

15. The learned counsel for the petitioner also contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondent as such the respondent had violated the principles of “last come first go”. However, except for the bald statement of the petitioner, no other evidence has been led by him to prove that the persons junior to him have been retained by the respondent. In cross-examination, the petitioner expressed his ignorance that Bahadur Sukh, Rinku and Suresh have been regularized by the department. No documentary evidence has been placed on record by the petitioner which could go to show that the respondent has retained the persons junior to him and engaged fresh hands. Hence, in the absence of any cogent and satisfactory evidence on record, the case of the petitioner does not fall under section 25-G and 25-H of the Act.

16. Thus, in view of the law laid down (*supra*) and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* December 2009 by the respondent is not illegal and unjustified. Accordingly, issue No.1 is decided in favour of the respondent and against the petitioner.

*Issue No. 2 :*

17. Since, the petitioner has failed to prove issue No. 1 above, this issue becomes redundant.

*Issue No. 3 :*

18. In support of this issue, no evidence has been led by the respondent. Moreover, the present claim petition has been filed by the petitioner pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with this petition

which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

*Relief:*

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 12<sup>th</sup> day of April, 2018.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. : 6 of 2017  
Instituted on : 5-1-2017  
Decided on : 20-4-2018

Roshan Lal s/o Shri Kundan Lal, r/o Village Talah, P.O Bharara, Tehsil Sunni, District Shimla, H.P. . .*Petitioner.*

*Vs.*

1. The Engineer-in-Chief, I&PH, US Club, Shimla, District Shimla, H.P.
2. Executive Engineer, I&PH Division Sunni, Tehsil Sunni, District Shimla, H.P.
3. Sub-Divisional Officer I&PH, Sub-Division Sunni, Tehsil Sunni, District Shimla, H.P. . .*Respondents.*

*Reference under section 10 of the Industrial Disputes Act, 1947*

For petitioner : Shri Ajay Shandil, Advocate  
For respondents : Shri Mahender Singh, ADA

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

**“Whether alleged termination of services of Shri Roshan Lal s/o Shri Kundan Lal, r/o Village Talah, P.O Bharara, Tehsil Sunni, District Shimla H.P. during May 2010 by the Executive Engineer, IPH Division Sunni, District Shimla, H.P. had raised his industrial dispute after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in**

**view the delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

2. Briefly, the case of the petitioner is that initially *w.e.f.* 1-3-1995, he was engaged as daily waged beldar by the respondents and was asked to work at IPH Section Jalog and he had discharged his duties as assigned to him with full sincerity, honesty, devotion as well as to the entire satisfaction of his superiors and there has been no complaint what-so-ever with regard to his work and conduct. It is further stated that the petitioner had worked continuously till 31-5-1997 and had completed more than 240 days in each calendar year and also preceding to the date of his oral and illegal termination and before dispensing with the services of the petitioner neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given nor the retrenchment compensation was paid. That the petitioner had visited the office of respondents many times and also made various representations to the authorities but every time he was assured that he will be called but no action has been taken for long time. That the petitioner had approached the Hon'ble High Court by way of CWP No. 7379/2012 which was decided on 5-9-2012 with the direction to the respondents that if they require additional man-power on account of availability of work, the petitioner will be engaged in preference to new recruits and since the respondents have not taken any action, hence, the petitioner filed another CWP No. 1484/2016 which was disposed by the Hon'ble High Court with the direction to the respondents to consider the case of the petitioner in eight weeks but till date no action has been taken by the respondents and thereafter the petitioner had raised the demand notice on 4-5-2010 but the Labour Commissioner had refused to refer the dispute for adjudication to this Court which was challenged in the Hon'ble High Court and on the direction of the Hon'ble High Court the present reference was sent to this Court for adjudication. That the regular work is available in IPH Division Sunni as the respondents have retained many juniors namely Tara Devi, Roop Lal, Ami Chand, Yadav Chand, Vija Ram, Khem Raj, Sohan Lal and Surender Lal and their services have been regularized. That the action of the respondents in terminating the services of the petitioner is in violation of the provisions of sections 25-F, 25-G and 25-H of the Act. Against this back-drop it has been prayed that the petitioner be re-engaged in service with all consequential service benefits such seniority and continuity with back-wages and he may be regularized.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken that the petition suffers from delay and latches and abandonment of job. On merits, it has been asserted that the petitioner was engaged in the department during the year 1995 and thereafter during the year 1997 and thereafter he had left the job at his own and his services were never terminated by the respondents. It is denied that the petitioner had worked for 240 days continuously in the department and since he had not completed 240 days in any calendar year, hence, the question for compliance of mandatory provisions of the Act does not arise at all. It is further asserted that the petitioner had never approached the respondents department after he left the job. It is denied that the respondents retained junior persons to the petitioner, hence, the question for violation of provisions of sections 25-F, 25-G and 25-H does not arise. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reiterated the averments as made in the claim petition by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 15-7-2017 :—

- (1) Whether the termination of the services of the petitioner during May, 2010 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP.*

(2) If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP*.

(3) Whether the claim petition is hit by delay and laches as alleged? . . .*OPR*.

(4) Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :—

Issue No. 1 : No

Issue No. 2 : Becomes redundant

Issue No. 3 : Yes

Relief : Reference answered in favour of the respondents and against the petitioner per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1 & 3 :*

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, learned ADA for the respondents contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondents who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

11. To prove issue No.1, the petitioner examined three PWs. The petitioner himself stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copies of judgments passed by the Hon'ble High Court mark PX and mark PY. In cross-examination, he denied that he had not completed 240 days in any calendar year. He further denied that in the year 1995, he had worked for 17 days in the month of November and 9 days in the month of Feb. 1997. He denied that the department had not terminated his services and he had left the job at his own. He further denied that after the year 1997, he had not approached the department for his re-instatement. He also denied that no junior to him was engaged after the year, 1997. He denied that Ms. Tara Devi and Roop Lal are not his juniors.

12. PW-2 Shri Hari Dass, Senior Assistant has stated that as per record, the petitioner was engaged on daily wage basis on 14-11-1994 and he worked till 28-2-1997. In cross-examination, he admitted that the petitioner had worked for 17 days in the year 1995 and 9 days in the year 1997 and stated that he (petitioner) had not worked in the year 1996.

13. Shri Dinesh Bhardwaj, Assistant Engineer appeared into the witness box as PW-3 and tendered in evidence the copy of seniority list Ex. PW-3/A.

14. On the other hand, the respondents have examined Shri Praveen Kant Sharma, Junior Engineer, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter Ex. RW-1/B, copy of mandays chart Ex. RW-1/C and copy of letter dated 17-8-2011 Ex. RW-1/D. In cross-examination, he denied that the services of the petitioner were terminated orally on 31-5-1997. He admitted that neither any notice was issued nor any retrenchment compensation was paid to the petitioner. He denied that the petitioner had completed 240 days in each calendar year. He admitted that Tara Devi was engaged in the year 1996.

15. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 26 days as daily waged beldar with the respondents *w.e.f.* 14-11-1995 till 28-2-1997. From the perusal of record, it has also become clear that as per reference sent by the appropriate government for adjudication to this Court, the termination of services of petitioner has been wrongly shown as May 2010 whereas the petitioner had worked with the respondents only upto 31-5-1997 as averred by the petitioner himself in the claim petition. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

16. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 13 years. According to the petitioner he was terminated in the year 1997. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 13 years. Therefore, the position of law in respect of a stale claim is required to be seen.

17. In (2013) 14 SCC 543, titled as **Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

“19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in *Gitam Singh* that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

18. In **Assistant Executive Engineer, Karnataka Vs. Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

“Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in *Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* (1999) 6 SCC 82 and *Sapan Kumar Pandit vs. U.P. SEB* (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand.”

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

19. In **Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91**, the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour Court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. “In *Ajaib Singh (supra)*, the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in *Ajaib Singh (supra)*, but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court.”

14. "The decision of Ajaib Singh (supra) must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out there from. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom *Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate*, JT [2005 (1) SC 303], and *Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.* para 42."

15" In *Balbair Singh vs. Punjab Roadways and Another* [(2001) 1 SCC 133], as regard Ajaib Singh (supra), this Court observed :

5." The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of *Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* (1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].

6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in *Assistant Executive Engineer, Karnataka vs. Shivalinga* [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in *Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* (1999) 6 SCC 82 and *Sapan Kumar Pandit vs. U.P. SEB* (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."



17. "In *Nedungadi Bank Ltd. (supra)*, a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in *Ajaib Singh (supra)*, opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

*(Emphasis supplied).*

20. In **(2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram**, the termination was dated 19-9-1983 and the reference was made on 29-8-1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

"10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures."

21. In **Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

"9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons....."

22. In **UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15-3-1973 and the reference was dated 15-6-1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

“ 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, never the less the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent.”

23. In **(2009) 13 SCC 746, State of Karnataka Vs. Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

“9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work.....

24. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of HP and others decided on 26.10.2016**, it has been held as under:

**“9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position”.**

25. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

26. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were allegedly terminated *w.e.f.* 31-5-1997 and he raised the present dispute after a period of more than 13 years. In his statement as PW-1, the petitioner has stated that after his termination he was assured by the

respondents that he would be called back to resume his duties. However, except for his bald statement there is no other evidence on record to suggest as to when the respondents had given him assurance. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 13 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 13 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

27. On merits, from the perusal of evidence led by the parties, the petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

***“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”***

In **AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh**, the Hon'ble Supreme Court has held that:—

***“Incuse workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. The perusal of mandays chart Ex. RW-1/C shows that the petitioner had worked with the respondents for 17 days in the year 1995 and 9 days in the year 1997. No evidence has been led by the petitioner to contradict the mandays chart Ex. RW-1/C tendered in evidence by the respondents. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

28. The learned counsel for the petitioner next contended that the respondents had taken the plea of abandonment in its reply but had totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many

years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 13 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 13 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 13 years as the delay in the present case is certainly fatal.

29. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of “last come first go”. The petitioner averred in the claim petition that he was engaged *w.e.f.* 1-3-1995. The learned counsel for the petitioner has placed reliance upon Ex. PW-3/A in order to show that the juniors have been retained by the respondents. However, the petitioner cannot claim equal treatment with the juniors who have allegedly been retained by the respondents as he had raised the demand notice after a period of 13 years. To take this view, I am fortified with the judgment of our own **Hon’ble High Court in CWP No. 4515/2012 decided on 13-6-2012, titled as Suraj Mani Vs. HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 13 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 13 years.

27. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 13 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

**Issue No. 2 :**

28. Since, the petitioner has failed to prove issue No.1, above, this issue becomes redundant.

**Relief :**

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 20<sup>th</sup> day of April, 2018.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. : 5 of 2017

Instituted on : 5-1-2017

Decided on : 20-4-2018

Mehar Singh s/o Late Shri Anant Ram, R/o Village Talah, P.O. Bharara, Tehsil Sunni, District Shimla, H.P. . *Petitioner.*

*Vs.*

1. The Engineer-in-Chief, I&PH, US Club, Shimla District Shimla, H.P.
2. Executive Engineer, I&PH Division Sunni, Tehsil Sunni, District Shimla, H.P.
3. Sub-Divisional Officer I&PH, Sub-Division Sunni, Tehsil Sunni, District Shimla, H.P. . *Respondents.*

*Reference under section 10 of the Industrial Disputes Act, 1947*

For petitioner : Shri Ajay Shandil, Advocate

For respondents : Shri Mahender Singh, ADA

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

**“Whether alleged termination of services of Shri Mehar Singh s/o late Shri Anant Ram, r/o Village Talah, P.O. Bharara, Tehsil Sunni, District Shimla, H.P. during May, 2010 by the Executive Engineer, IPH Division Sunni, District Shimla H.P. had raised his industrial dispute after more than 13 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of more than 13 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”**

2. Briefly, the case of the petitioner is that initially *w.e.f.* 1-2-1995, he was-engaged as daily waged beldar by the respondents and was asked to work at IPH Section Jalog and he had discharged his duties as assigned to him with full sincerity, honesty, devotion as well as to the entire satisfaction of his superiors and there has been no complaint what-so-ever with regard to his work and conduct. It is further stated that the petitioner had worked continuously till 31-3-1997 and had completed more than 240 days in each calendar year and also preceding to the date of his oral and illegal termination and before dispensing with the services of the petitioner neither any notice under section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) was given nor the retrenchment compensation was paid. That the petitioner had visited the office of respondents many times and also made various representations to the authorities but every time he was assured that he will be called but no action has been taken for long time. That the petitioner had approached the Hon'ble High Court by way of CWP No. 7379/2012 which was decided on 5-9-2012 with the direction to the respondents that if they require additional man-power on account of availability of work, the petitioner will be engaged in preference to new recruits and since the respondents have not taken any action, hence, the petitioner filed another CWP No. 1484/2016

which was disposed by the Hon'ble High Court with the direction to the respondents to consider the case of the petitioner in eight weeks but till date no action has been taken by the respondents and thereafter the petitioner had raised the demand notice on 4-5-2010 but the Labour Commissioner had refused to refer the dispute for adjudication to this Court which was challenged in the Hon'ble High Court and on the direction of the Hon'ble High Court the present reference was sent to this Court for adjudication. That the regular work is available in IPH Division Sunni as the respondents have retained many juniors namely Tara Devi, Roop Lal, Ami Chand, Yadav Chand, Vija Ram, Khem Raj, Sohan Lal and Surender Lal and their services have been regularized. That the action of the respondents in terminating the services of the petitioner is in violation of the provisions of sections 25-F, 25-G and 25-H of the Act. Against this back-drop it has been prayed that the petitioner be re-engaged in service with all consequential service benefits such seniority and continuity with back-wages and he may be regularized.

3. By filing reply, the respondents contested the claim of the petitioner wherein preliminary objections have been taken that the petition suffers from delay and laches and abandonment of job. On merits, it has been asserted that the petitioner was engaged in the department during the year, 1995 and thereafter during the year, 1997 and thereafter he had left the job at his own and his services were never terminated by the respondents. It is denied that the petitioner had worked for 240 days continuously in the department and since he had not completed 240 days in any calendar year, hence, the question for compliance of mandatory provisions of the Act does not arise at all. It is further asserted that the petitioner had never approached the respondents department after he left the job. It is denied that the respondents retained junior persons to the petitioner, hence, the question for violation of provisions of sections 25-F, 25-G and 25-H does not arise. The respondents prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reiterated the averments as made in the claim petition by denying those of the respondents.

5. On the pleadings of the parties, the following issues were framed on 15-7-2017.

- (1) Whether the termination of the services of the petitioner during May, 2010 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP*.
- (2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP*.
- (3) Whether the claim petition is hit by delay and laches as alleged? . . .*OPR*.

#### 12. Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: Becomes redundant
<i>Issue No. 3</i>	: Yes

*Relief*

: Reference answered in favour of the respondents and against the petitioner per operative part of award.

**REASONS FOR FINDINGS***Issues No. 1 & 3 :*

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondents illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondents and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

10. On the other hand, learned ADA for the respondents contended that the claim of the petitioner is highly belated and stale. He further contended that the services of the petitioner had never been terminated by the respondents who had left the job at his own and even he had not completed 240 days in any calendar year. He also contended that no junior to the petitioner had been retained and no fresh hands had been engaged by the respondents, hence, he is not entitled to any relief.

11. To prove issue No.1, the petitioner examined three PWs. The petitioner himself stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence the copies of judgments passed by the Hon'ble High Court mark PX and mark PY. In cross-examination, he denied that he had not completed 240 days in any calendar year. He further denied that in the year, 1995, he had worked for 30 days in the month of July and 30 days in the month of December. He also denied that in the year, 1997 he had worked for 14 days in the month of Feb., and 20 days in the month of March. He denied that the department had not terminated his services and he had left the job at his own. He further denied that after the year, 1997, he had not approached the department for his re-instatement. He also denied that no junior to him was engaged after the year, 1997. He denied that Ms. Tara Devi and Roop Lal are not his juniors.

12. PW-2 Shri Hari Dass, Senior Assistant has stated that as per record, the petitioner was engaged on daily wage basis in the month of July, 1995 and he worked till March, 1997. In cross-examination, he admitted that the petitioner had worked for 60 days in the year, 1995 and 34 days in the year, 1997 and stated that he (petitioner) had not worked in the year, 1996.

13. Shri Dinesh Bharwaj, Assistant Engineer appeared into the witness box as PW-3 and tendered in evidence the copy of seniority list Ex. PW-3/A.

14. On the other hand, the respondents have examined Shri Praveen Kant Sharma, Junior Engineer, who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter Ex. RW-1/B, copy of mandays chart Ex. RW-1/C and copy of letter dated 17-8-2011 Ex. RW-1/D. In cross-examination, he denied that the services of the petitioner were terminated orally on 31-3-1997. He admitted that neither any notice was issued nor any retrenchment compensation was paid to the petitioner. He denied that the petitioner had completed 240 days in each calendar year. He admitted that Tara Devi was engaged in the year, 1996.

15. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked only for 94 days as daily waged beldar with the respondents *w.e.f.* 7/1995 till 3/1997. From the perusal of record, it has also become clear that as per reference sent by the appropriate government for adjudication to this Court, the termination of services of petitioner has been wrongly shown as May, 2010 whereas the petitioner had only worked with the respondents upto March, 1997 as averred by the petitioner himself in the claim petition. Now, the question which arises for consideration before this Court is as to whether the reference is stale and highly belated. The learned counsel for the petitioner contended that under the Industrial Disputes, no limitation is prescribed and the provision of Article 137 of the Limitation Act 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

16. Undisputedly, the petitioner had raised his industrial dispute after a period of more than 13 years. According to the petitioner he was terminated in the year, 1994. It is also clear from the reference itself that the petitioner had raised the industrial dispute after more than 13 years. Therefore, the position of law in respect of a stale claim is required to be seen.

17. **In (2013) 14 SCC 543, titled as Assistant Engineer Rajasthan State Agriculture Marketing Board, Sub Division Kota Vs. Mohan Lal**, it has been held by the Hon'ble Apex Court that though the Limitation Act is not applicable to the reference made under the I.D Act but delay in raising industrial Dispute is an important circumstance for exercise of judicial discretion in determining relief that is to be granted. The relevant portion of aforesaid judgment is reproduced as under:

“19. We are clearly of the view that though the Limitation Act, 1963 is not applicable to the reference made under the ID Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in *Gitam Singh* that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

18. **In Assistant Executive Engineer, Karnataka Vs. Shivalinga reported in (2002) 10 SCC 167**, the services of the employee were terminated on 25-5-1985 and he approached the Labour Officer on 17-3-1995 and then the reference was made by the Government to the Labour Court. There was a delay of more than nine years in approaching the Labour Officer. In para 6 of the aforesaid judgment, the Hon'ble Apex Court has held as under:

“Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in *Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* (1999) 6 SCC 82 and *Sapan Kumar Pandit vs. U.P. SEB* (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and



records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

Thus, it has been held that in case there is a serious dispute or doubt in such relationship and the records of the employer become relevant, the long delay would come in the way of maintenance of the same.

**19. In *Haryana State Coop. Land Development Bank Vs. Neelam reported in (2005) 5 SCC 91***, the employee was discontinued from service *w.e.f.* 30-5-1986 and he raised the demand notice on 30-9-1993 and thereafter the reference was sent to the Labour court by the appropriate government. The Labour Court passed an order answering the reference against the employee holding that the claim was belated. Thereafter, a writ petition was filed before the Hon'ble High Court which was allowed and the employee was directed to be reinstated in service with continuity of service but without back-wages. The Hon'ble Supreme Court set aside the judgment of the High Court and restored the judgment of the Labour Court as a result the reference stood answered against the workman. The relevant portion of the aforesaid judgment is reproduced as under:

13. "In *Ajaib Singh (supra)*, the management did not raise any plea of delay. The Court observed that had such plea been raised, the workman would have been in a position to show the circumstances which prevented him in approaching the Court at an earlier stage or even to satisfy the Court that such a plea was not sustainable after the reference was made by the Government. In that case, the Labour Court granted the relief, but the same was denied to the workman only by the High Court. The Court referred to the purport and object of enacting Industrial Disputes Act only with a view to find out as to whether the provisions of the Article 137 of the Schedule appended to the Limitation Act, 1963 are applicable or not. Although, the Court cannot import a period of limitation when the statute does not prescribe the same, as was observed in *Ajaib Singh (supra)*, but it does not mean that irrespective of facts and circumstances of each case, a stale claim must be entertained by the appropriate Government while making a reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court."

14. "The decision of *Ajaib Singh (supra)* must be held to have been rendered in the fact situation obtaining therein and no ratio of universal application can be culled out therefrom. A decision, as is well-known, is an authority of what it decides and not what can logically be deduced therefrom *Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate*, JT 2005 (1) SC 303], and *Kalyan Chandra Sarkar vs. Rajesh Ranjan @ Pappu Yadav & Anr.* para 42."

15 "In *Balbair Singh vs. Punjab Roadways and Another* [(2001) 1 SCC 133], as regard *Ajaib Singh (supra)*, this Court observed :

5."The learned counsel for the petitioner strenuously urged that the Tribunal committed error in denying relief to the workman merely on the ground of delay. The learned counsel submitted that in industrial dispute delay should not be taken as a ground for denying relief to the workman if the order/orders under challenge are found to be unsustainable in law. He placed reliance on the decision of this Court in the case of *Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd.* [(1999) 6 SCC 82 : 1999 SCC (L&S) 1054 : JT (1999) 3 SC 38].

6. "We have carefully considered the contentions raised by the learned counsel for the petitioner. We have also perused the aforementioned decision. We do not find that any general principle as contended by the learned counsel for the petitioner has been laid down in that decision. The decision was rendered on the facts and circumstances of the case, particularly the fact that the plea of delay was not taken by the management in the proceeding before the Tribunal. In the case on hand the plea of delay was raised and was accepted by the Tribunal. Therefore, the decision cited is of little help in the present case. Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially."

16. "Yet again in Assistant Executive Engineer, Karnataka vs. Shivalinga [(2002) 10 SCC 167], a Bench of this Court observed :

"6. Learned counsel for the appellant strongly relied on the reasoning of the Labour Court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh vs. Sirhind Coop. Marketing-cum-Processing Service Society Ltd. (1999) 6 SCC 82 and Sapan Kumar Pandit vs. U.P. SEB (2001) 6 SCC 222 to contend that there is no period of limitation prescribed under the Industrial Disputes Act to raise the dispute and it is open to a party to approach the Court even belatedly and the Labour Court or the Industrial Tribunal can properly mould the relief by refusing or awarding part-payment of back wages. It is no doubt true that in appropriate cases, as held by this Court in the aforesaid two decisions, such steps could be taken by the Labour Court or the Industrial Tribunal, as the case may be, where there is no such dispute to relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances to make them available to a Labour Court or the Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think the two decisions relied upon by the learned counsel have no application to the case on hand."

17. "In Nedungadi Bank Ltd. (*supra*), a Bench of this Court, where S. Saghir Ahmad was a member [His Lordship was also a member in Ajaib Singh (*supra*), opined :

"6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made."

(*Emphasis supplied*).

**20. In (2006) 5 SCC 433 in case titled as UP State Road Transport Corporation Vs. Babu Ram**, the termination was dated 19-9-1983 and the reference was made on 29-8-1998. The Labour Court has held the termination as un-valid without considering the question of delay. The Hon'ble High Court dismissed the writ petition. The Hon'ble Supreme Court has held that no material was placed on record to show that the dispute was raised within reasonable time and the employee was not responsible for delay. The relevant portion of the aforesaid judgment is reproduced as under:

“10. It is to be noted that the High Court has very cryptically disposed of the writ petition. The workman has not placed any material to show that it had raised dispute within a reasonable time, and/or that he was not responsible for delayed decision if any in the conciliation proceedings. It was for him to show that the dispute was raised within a reasonable time and that he was not responsible for any delay. The High Court, on a hypothetical basis has assumed that the dispute might have been raised promptly but delayed by the State Government and he cannot be penalized for delay in finalizing the conciliation proceedings and the reference. But neither the Labour Court nor the High Court has even noted the factual position. The conclusion was based on surmises and conjectures.”

**21. In Assistant Engineer, CAD Kota Vs. Dhan Kunwar reported in (2006) 5 SCC 481**, the delay was of about eight years in raising the dispute. The Labour Court granted reinstatement with 30 % back-wages. The writ petition and writ appeal filed by the employer were dismissed. However, the Hon'ble Apex Court set aside the judgments of Hon'ble High Court and the Labour Court and held that no relief should have been granted. The relevant portion of the aforesaid judgment is reproduced herein under:

“9. In the background of what has been stated above, the Labour Court should not have granted relief. Unfortunately, learned Single Judge and the Division Bench did not consider the issues in their proper perspective and arrived at abrupt conclusions without even indicating justifiable reasons.....

**22. In UP State Road Transport Corporation Vs. Ram Singh and another (2008) 17 SCC 627**, the termination was dated 15.3.1973 and the reference was dated 15-6-1986 and there was a delay of about 13 years in making the reference. The reference was dismissed on the ground of delay. The relevant portion of the aforesaid judgment reads as under:

“ 7. We are of the view that in the facts and circumstances of the case, the High Court erred in not setting aside the award of the Labour Court. Apart from the unacceptable manner in which the appellant was denied the opportunity of participating in the proceedings, including being debarred from cross-examining the respondent, the Labour Court could not have entertained the industrial dispute given the enormous delay. This Court has in several decisions has held that while delay cannot by itself be sufficient reason to reject an industrial dispute, nevertheless the delay cannot be un-reasonable. The decision in Prakash Chander Sahu has reaffirmed this principal. The reason for diligence and promptness lies in the fact that the records pertaining to an employee might have been destroyed and it would be difficult to obtain witnesses who would be competent to give evidence so many years later if the Labour Court wishes to hold a further enquiry into the matter. In the present case, the delay of 13 years is unreasonable. The mere fact that the respondent was making repeated representations would not justify his raising the issue before the Labour Court after 13 years. In any event, the last representation was made in 1983 and the industrial dispute was admittedly raised in 1986. The lack of diligence on the part of the respondent is apparent.”

23. In (2009) 13 SCC 746, **State of Karnataka Vs. Ravi Kumar** the Hon'ble Supreme Court dismissed the reference on the ground of delay and it was held that the person supervising could not be expected to prove after 14 years that the employee did not work or that he did not work for 240 days or he voluntarily left the job. The relevant portion of the aforesaid judgment reads as under:

“9. It is not possible to expect the Asstt. Executive Engineer to prove after 14 years that the daily wager did not work or that he did not work for 240 days in a year or that the daily wager voluntarily left the work.....

24. In a recent judgment of our **Hon'ble High Court delivered in CWP No. 1912 of 2016 titled as Bego Devi Versus State of HP and others decided on 26.10.2016**, it has been held as under:

“9. It is beaten law of land that delay takes away the settings of law. A person who does not seek relief within time, his petition has to be dismissed only on the grounds of delay and laches, otherwise, it would amount to gross misuse of jurisdiction and disturb the settled position”.

25. In view of the aforesaid law laid down by the Hon'ble Apex Court, it is clear that though the Court cannot import the period of limitation and the reference cannot be dismissed merely on the ground of delay, it does not mean that irrespective of the facts and circumstances of the case, a stale claim must be entertained and the relief should be granted. In the case of delay, no formula of universal application can be laid down and it would depend on the facts and circumstances of each case. The delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. The onus of showing that the dispute was raised within a reasonable time is upon the workman and it is for the workman to explain the delay by furnishing the acceptable explanation to the satisfaction of the Court that he was not responsible for the delay caused. The fact that the workman was making repeated representations/requests is not sufficient to explain the delay.

26. Keeping in view the aforesaid principles laid down by the Hon'ble Apex Court, the facts of this case are required to be seen. The services of the petitioner were allegedly terminated *w.e.f.* 31-3-1997 and he raised the present dispute after a period of more than 13 years. In his statement as PW-1, the petitioner has stated that after his termination he was assured by the respondents that he would be called back to resume his duties. However, except for his bald statement there is no other evidence on record to suggest as to when the respondents had given him assurance. No documentary evidence has been produced by the petitioner to prove that he had been visiting the respondent for his re-engagement during the period of 13 years. In the opinion of this Court, the explanation furnished by the petitioner for not raising the demand notice within a reasonable period cannot be accepted. The burden of proof was upon the petitioner to show that the dispute was raised within a reasonable time and to offer an explanation to the satisfaction of this Court for the delay of 13 years caused in seeking reference but the petitioner has failed to discharge his burden. The reference is therefore stale and is liable to be rejected on the ground of delay in raising the dispute.

27. On merits, from the perusal of evidence led by the parties, the petitioner has failed to prove on record that he had worked for 240 days in preceding twelve months prior to his termination. In **2009 (120) FLR 1007 incase titled as Relip Nagarpalika Vs. Babuji Gabhaji Thakore and others**, the Hon'ble Supreme Court has held as under:

***“The burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.”***

In *AIR 2006 S.C. 110* case titled as *Surindernagar District Panchyat Vs. Dayabhai Amar Singh*, the Hon'ble Supreme Court has held that:—

***“Incase workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”***

A bare perusal of the extract of the judgment re-produced, hereinabove, shows that the burden to prove completion of 240 days service lies on the workman and this burden is discharged on workman stepping in the witness box and adducing cogent evidence. The petitioner has failed to prove on record that he had put in 240 days in twelve calendar months preceding his termination. The perusal of mandays chart Ex. RW-1 shows that the petitioner had worked with the respondents for 60 days in the year, 1995 and 34 days in the year, 1997. No evidence has been led by the petitioner to contradict the mandays chart Ex. RW-1/C tendered in evidence by the respondents. There is no *iota* of evidence which could go to show that the petitioner had completed 240 working days in twelve calendar months preceding his termination. Hence, the case of the petitioner does not fall under section 25-F of the Industrial Disputes Act, 1947 and as such no protection of section 25-F can be granted to the petitioner.

28. The learned counsel for the petitioner next contended that the respondents had taken the plea of abandonment in its reply but had totally failed to establish such plea by producing any evidence on record. As pointed out earlier, the Hon'ble Supreme Court has held that the delay would certainly be fatal if it has resulted in material evidence relevant to the adjudication being lost and rendered unavailable. It has also been held by the **Hon'ble Supreme Court in 2009 (13) SCC 746** that the person supervising cannot be expected to prove after long delay that the employee/workman did not work for 240 days in a year or that he voluntarily left the job. It is difficult for the employer to obtain witness/es who would be competent to give evidence so many years later. It has further been held that lapse of time results in losing the remedy and the right as well and the delay in seeking the reference causes prejudice to both the employer and employee. In the present case also it would not be expected from the respondents to lead evidence and to bring witnesses or to place documents on record to prove after 13 years that the petitioner had abandoned the job at his own. The petitioner had raised the industrial dispute after lapse of about 13 years and remained silent during this period without any plausible explanation, and as such, no relief can be granted to him after a lapse of about 13 years as the delay in the present case is certainly fatal.

29. The learned counsel for the petitioner next contended that at the time of the termination of the petitioner, the respondents had retained his juniors and had engaged fresh hands who are still working as such the respondent had violated the principles of “last come first go”. The petitioner averred in the claim petition that he was engaged *w.e.f.* 1-2-1995. The perusal of the information under RTI Act Ex. PW-3/A collected by the petitioner, shows that after 1-2-1995 Smt. Vidya Devi was engaged on compassionate grounds whereas S/Shri Mohan Lal, Chiranji Lal and Roop Lal were transferred from other divisions and rest of the persons were engaged in other Sub Division *i.e.* IPH Sub Division Kotgarh and only Tara Devi was engaged as daily wages on 1.11.1996.

However, the petitioner cannot claim equal treatment with Smt. Tara Devi as he had raised the demand notice after a period of 13 years. To take this view, I am fortified with the judgment of our own **Hon'ble High Court in CWP No. 4515/2012 decided on 13-6-2012, titled as Suraj Mani Vs. HPSEB** wherein it has been held that the petitioners cannot claim equal treatment after about two decades with the juniors who have allegedly been retained. The petitioner who slept for a long period of 13 years is not entitled to claim any relief on the ground of equal treatment. Since, the reference has been proved to be stale and belated as such the protection of sections 25-G and 25-H of the Act cannot be granted to the petitioner. If the alleged termination of petitioner was either illegal or unjustified, he would not have kept silent for a period of 13 years.

30. Thus, keeping in view the above cited rulings and the material fact that the petitioner had raised the industrial dispute after lapse of about 13 years and remained silent during this period without any plausible explanation as such no relief can be granted to him. Hence, it cannot be said that the termination of the services of the petitioner is illegal and unjustified. Consequently, both these issues are answered against the petitioner.

*Issue No. 2 :*

31. Since, the petitioner has failed to prove issue No.1, above, this issue becomes redundant.

*Relief :*

As a sequel to my findings on the aforesaid issues, the claim of the petitioner fails and is hereby dismissed. Consequently, the reference stands answered against the petitioner and in favour of the respondents. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 20<sup>th</sup> Day of April, 2018.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**18.04.2018**

*Present :* Petitioner in person with Sh. J.C. Bhardwaj, Authorized Representative  
Sh. Vishal Sharma, Ld. Csl. for respondent

At this stage a joint application has been filed by the parties for preponment of the case on the ground that an out of court settlement has been arrived at between the parties. Heard. Application allowed and the case is ordered to be taken up today itself.

Vide separate statement recorded today, it has been stated by the petitioner that he had entered into an out of court settlement with the respondents with respect to reference No. 89/2016, *vide* which the respondents had paid to him a sum of Rs.32130/- through demand draft and now he has got no dispute with the respondents arising out of the reference petition No. 89/2016 and the reference may be decided accordingly.

Therefore, in view of the statement of the petitioner, I am satisfied that a lawful compromise has been effected between the parties and the petitioner has received a sum of

Rs.32130/- through demand draft and now he has got no dispute with the respondents arising out of reference petition No. 89/2016. Hence, the reference sent by the appropriate government for adjudication answered accordingly in terms of the statement of the petitioner, which shall form a part of the record. Let a copy of this award be sent to appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced :  
18.04.2018

**18.04.2018**

*Present* : Petitioner in person with Sh. J.C. Bhardwaj, Authorized representative  
Sh. Vishal Sharma, Ld. Csl. for respondents

At this stage a joint application has been filed by the parties for preponment of the case on the ground that an out of court settlement has been arrived at between the parties. Heard. Application allowed and the case is ordered to be taken up today itself.

Vide separate statement recorded today, it has been stated by the petitioner that she had entered into an out of court settlement with the respondents with respect to reference No. 85/2015, *vide* which the respondents had paid to her a sum of Rs.66825/- through demand draft and now she has got no dispute with the respondents arising out of the reference petition No. 85/2015 and the reference may be decided accordingly.

Therefore, in view of the statement of the petitioner, I am satisfied that a lawful compromise has been effected between the parties and the petitioner has received a sum of Rs.66825/- through demand draft and now she has got no dispute with the respondents arising out of reference petition No. 85/2015. Hence, the reference sent by the appropriate government for adjudication is answered accordingly in terms of the statement of the petitioner, which shall form a part of the record. Let a copy of this award be sent to appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced :  
18-04-2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

09.03.2018

*Present:* Smt. Gurwanti Sharma and Anshu Bal, petitioners in person  
Sh. Kapil Thakur, Ld. vice Csl. for respondent

Notice issued to the petitioners namely Sushma Devi, Promila Devi and Legal Hiers of Smt. Kanta Thakur *i.e.* Sh. Manjeet and Deepak not received back. Let fresh notice be issued to them returnable for 07-04-2018.

Sd/-  
*Presiding Judge,*  
*Labour Court, Shimla*  
*Camp at Solan.*

09.03.2018

*Present :* Sh. J.C. Bhardwaj, AR for petitioner  
None for respondent

Correct addresses of the workmen namely Puran Chand and Sukh Ram again not filed. It is stated by the AR for the petitioner that their correct addresses are not available with him. The perusal of the record reveals that their correct addresses are also not mentioned in the reference sent to this court by the appropriate authority. It may be pertinent to mention here that the present reference has been received with respect to the termination of 31 workers as per list enclosed with the reference as Annexure-D and the demand notice has been raised by the Base Corporation Workers and Employees union on their behalf. However, the claim petition has been filed on behalf of only six workers namely S/Sh. Puran Chand, Shyam Singh, Ram Lal, Bhim Singh, Surinder Singh and Sukh Ram, out of which 4 workers *i.e.* Bhim Singh, Surinder Singh, Shyam Singh and Ram Lal have settled their claim with the respondent *vide* settlement Ex. C-1. Since, the correct addresses of the aforesaid workmen namely Puran Chand and Sukh Ram are not available, therefore the proceedings in reference petition No. 46 of 2012 are adjourned *sin-a-die*. However the aforesaid workmen S/Sh. Puran Chand and Sukh Ram are at liberty to move an application for revival of the proceedings in the present reference as and when they approach this court.

Sd/-  
Presiding Judge,  
Labour Court, Shimla  
Camp at Solan.

10.04.2017

*Present :* Sh. J.C. Bhardwaj, AR for the petitioner  
Sh. Vivek Kalia, Ld. Csl. for respondent

*Vide* separate statement, Sh. Satish Bhatia President of Base Corporation Limited Workers and Employees Union (Affiliated to AITUC) stated that he had entered into an out of court settlement with the respondent management under section 18 (1) of the Industrial Disputes Act, 1947, the copy of which is Ex. C-1, *vide* which all the issues raised in reference number 46 of 2012 have been settled. He further stated that in lieu of the aforesaid settlement Ex. C-1, he has received cheques of the workmen namely S/ Sh. Bhim Singh in the sum of Rs. 20,000/-, Surinder Singh in the sum of Rs. 20,000/-, Shyam Singh in the sum of Rs.18,000/- and Ram Lal in the sum of Rs.18,000/- towards their full and final settlement of the claim in reference number 46 of 2012 and now, the petitioner union has no dispute and claim with the respondent management pertaining to the reference number 46 of 2012 in any manner whatsoever and the reference may be decided in terms of settlement Ex. C-1.

Sh. J. C. Bhardwaj, the authorized representative of the petitioner union has also stated to the similar effect and his statement is also recorded separately.

Sh. Rakesh Sharma has also stated on behalf of the respondent that the respondent had entered into a settlement with the petitioner union *vide* settlement Ex. C-1 and had settled all the issues with the petitioner union, which have been raised *vide* reference number 46 of 2012.

It may be pertinent to mention here that the present reference has been received with respect to the termination of 31 workers as per list enclosed with the reference as Annexure-D and the demand notice has been raised by the Base Corporation Workers and Employees Union on their behalf. However, the claim petition has been filed on behalf of only six workers namely S/Sh. Puran Chand, Shyam Singh, Ram Lal, Bhim singh, Surinder Singh and Sukh Ram, out of which 4



workers *i.e.* Bhim Singh, Surinder Singh, Shyam Singh and Ram Lal have settled their claim with the respondent *vide* settlement Ex.C-1. Therefore, let notice be issued to the workmen namely Dinesh and Attar Singh to appear in person before this court at Solan on 06-05-2017.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

**18.04.2018**

Present : Petitioner in person with Sh. J.C. Bhardwaj, authorized Representative.  
Sh. Vishal Sharma, Ld. Csl. for respondent.

At this stage a joint application has been filed by the parties for preponment of the case on the ground that an out of court settlement has been arrived at between the parties. Heard. Application allowed and the case is ordered to be taken up today itself.

Vide separate statement recorded today, it has been stated by the petitioner that she had entered into an out of court settlement with the respondents with respect to reference No. 81/2016, *vide* which the respondents had paid to her a sum of Rs. 22950/- through demand draft and now she has got no dispute with the respondents arising out of the reference petition No. 81/2016 and the reference may be decided accordingly.

Therefore, in view of the statement of the petitioner, I am satisfied that a lawful compromise has been effected between the parties and the petitioner has received a sum of Rs. 22950/- through demand draft and now she has got no dispute with the respondents arising out of reference petition No. 81/2016. Hence, the reference sent by the appropriate government for adjudication is answered accordingly in terms of the statement of the petitioner, which shall form a part of the record. Let a copy of this award be sent to appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced :  
18.04.2018

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Labour Court, Shimla.*

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**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. no. : 23 of 2014  
Instituted on : 13-2-2014  
Decided on : 18-4-2018

1. Vikram Singh s/o Shri Subhash Chand, V.P.O. Chandrot, Tehsil Baroh, Distt. Kangra, H.P.
2. Gurdev Singh s/o Shri Sant Ram, Village Khali, P.O. Sai, Tehsil Baddi, Distt. Solan, H.P.

3. Ashwani Kumar s/o Shri Bhagwan Dass, r/o Village Bhatwara, P.O. Amroh, Tehsil Mukerian, District Hoshiarpur, Punjab.
4. Manjeet Singh s/o Shri Subhash Chand, V.P.O. Chandrot, Tehsil Baroh, Distt. Kangra, H.P.

Through J.C Bhardwaj, President, HP AITUC HQ Saproon Solan, H.P. . *Petitioners.*

*Vs.*

M/s Indo Farm Equipment Ltd., Export Promotion Park Phase-II, Baddi-173 205, District Solan, H.P. through its Factory Manager. . *Respondent.*

### Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J. C. Bhardwaj, AR

For respondent : Shri H.R. Thakur, Advocate

### AWARD

The reference for adjudication, sent by the appropriate government, is as under:

**“Whether termination of the services of 1. Shri Vikram Singh s/o Shri Subhash Chand, V.P.O. Chandrot, Tehsil Baroh, Distt. Kangra, H.P., Employee Code 5955 w.e.f. 01-10-2013, 2. Shri Gurdev Singh s/o Shri Sant Ram, Village Khali, P.O. Sai, Tehsil Baddi, Distt. Solan, H.P., Employee Code 5560 w.e.f. 28-9-2013, 3. Shri Ashwani Kumar s/o Shri Bhagwan Dass, Village Bhatwara, P.O. Amroh, Tehsil Mukerian, Distt. Hoshiarpur (Punjab), Employee Code 366 w.e.f. 01-10-2013 and 4. Shri Manjeet Singh s/o Shri Subhash Chand, V.P.O. Chandrot, Tehsil Baroh, Distt. Kangra, H.P. Employee Code-5605 w.e.f. 28-9-2013 by the Employer/General Manager (HRD) M/s Indo Farm Equipment Limited, EPIP, Phase-II, Village Thana, Baddi, Distt. Solan, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workmen is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”**

2. Before, I proceed further, it is important to mention here that the above reference has been sent by the appropriate government regarding the termination of services of four workers namely Shri Vikram Singh s/o Shri Subhash Chand, Shri Gurdev Singh s/o Shri Sant Ram, Shri Ashwani Kumar s/o Shri Bhagwan Dass and Shri Manjeet Singh s/o Shri Subhash Chand. From the aforesaid reference it is also clear that the petitioner Shri Vikram Singh has alleged his termination to be illegal and unjustified w.e.f. 1-10-2013 and petitioner Shri Gurdev Singh has alleged his termination to be illegal and unjustified w.e.f. 28-9-2013 but in support thereof both the above named petitioners have failed to appear before this Court and to file any statement of claim and also failed to lead any evidence in support of their case. Similarly, petitioner Ashwani Kumar has filed the statement of claim and alleged his termination to be illegal and unjustified w.e.f. 1-10-2013 but he has also failed to appear thereafter before this Court and to lead any evidence in support of his case.

3. The petitioner Shri Manjeet Singh has filed the statement of claim wherein he has stated that on 11-11-2009, he was appointed as Tractor Mechanic by the respondent and served as

such till 28-9-2013 when his services were illegally and arbitrarily terminated with an oral order at the security gate of the factory and thereafter till 1-10-2013 he had continuously paid several visits at the gate of the factory with the purpose of resuming his normal duties but all in vain. It is further stated that no show cause notice and chargesheet was served upon the petitioner by the respondent and he was condemned unheard as no opportunity of any kind was afforded to him before terminating his services and even the enquiry officer never served any letter to hold enquiry against the petitioner and no enquiry report and second show cause notice was ever served upon the petitioner. It is also stated that there was a settlement between workers union and respondent company and the same was not being implemented by the respondent, hence, on the direction of the union, the workmen had started legitimate trade union activities like gate meetings etc. for the implementation of the settlement and as such the petitioner has been victimized for his legitimate trade union activities. That the case of the petitioner is duly covered under section 2-OO of the Act and since the respondent had employed more than one hundred workmen, hence, the petitioner could not have been removed from service without complying with the provisions of section 25-N of the Act. That the respondent has made the integrity of the petitioner doubtful in the eyes of one and all and as such he is still unemployed and shall remain so in future also in view of the unwarranted removal and punishment like termination from service behind his back. Against this back-drop a prayer has been made that the respondent be directed to reinstate the petitioner in the employment of the company with retrospective effect with full back-wages and other incidental benefits like seniority and continuity etc.

4. By filing reply, the respondent contested the claim of Shri Manjeet Singh (hereinafter referred as petitioner) wherein preliminary objections have been taken *qua* concealment of material facts by the petitioner, maintainability and that the petitioner has no cause of action or claim to maintain in law. On merits, it has been asserted that the services of the petitioner were terminated after following a due process of law as a complaint dated 19-9-2013 was received from Engine Assembly Supervisor that Manjeet Singh alongwith other workers has slowed down the production and was making 8 units against the required No. of 25 units and in other complaints received from security supervisor that Manjeet Singh was found littering in mysterious circumstances in sensitive areas where R & D testing fed was installed alongwith other workers and was also found instigating the co-workers to slow down the production and keeping in view his misconduct, unfair practice and misconduct a chargesheet dated 20-9-2013 was issued by the General Manager (HRD) to the petitioner and when the same was offered to him he refused to accept the same and thereafter *vide* letter dated 21-9-2013 the respondent management decided to conduct a fact finding enquiry and Mrs. Pavneet Miglani AGM-HR was appointed as enquiry officer but the petitioner again refused to accept the letter dated 21-9-2013 and also refused to participate in the enquiry and even the petitioner also refused to accept the letter dated 23-9-2013 written to him by the enquiry officer to appear before her. That the enquiry officer after recording the evidence of the witnesses submitted her fact finding report dated 25-9-2013 and after considering the report, the management removed Shri Manjeet Singh from service and a cheque of Rs. 26,145/- dated 28-9-2013 was sent which included one month notice pay, compensation as per section 25-F of the Act, leave encashment and bonus etc. but the same was not accepted by the petitioner and since the activities of Shri Manjeet Singh were against the set policy of the respondent company thus under compelling circumstances he was removed from service for loss of confidence after a proper enquiry. That the services of petitioner were terminated after providing him due opportunities which he failed to avail. It is further asserted that the show cause notice and chargesheet was issued to the petitioner but he had refused to receive the same which were later on sent to his address through registered post but he also refused to receive the same. The respondent prayed for the dismissal of the claim petition.

5. By filing rejoinder, the petitioner Manjeet Singh reiterated his allegations as made in the claim petition by denying those of the respondent.

6. On the pleadings of the parties, the following issues were framed on 4-1-2016.

- (1) Whether the termination of the services of petitioners S/Shri Vikram Singh *w.e.f.* 1-10-2013, Gurdev Singh *w.e.f.* 28-9-2013, Ashwani Kumar *w.e.f.* 1-10-2013 and Manjeet Singh *w.e.f.* 28-9-2013 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . .*OPP.*
- (2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioners are entitled to? . .*OPP.*
- (3) Whether the petitioners have concealed material facts from this Court as alleged? . .*OPR.*
- (4) Whether the petition is not maintainable as alleged? . .*OPR.*
- (5) Relief.

7. I have heard the learned counsel for the parties and have also gone through the record of the case.

8. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :—

*Issue No. 1* : Decided accordingly

*Issue No. 2* : Only Petitioner Manjeet Singh is entitled for reinstatement along-with seniority and continuity but without back-wages.

*Issue No. 3* : No

*Issue No. 4* : No

*Relief* : Reference answered in favour of the Petitioner Manjeet Singh and against respondent as well as other three petitioners namely Vikram Singh, Ashwani Kumar and Gurdev Singh per operative part of award.

### REASONS FOR FINDINGS

*Issue No. 1 :*

9. To prove issue No.1, the petitioner Manjeet Singh stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. In cross-examination, he denied that on 19-9-2013, the Production Manager had made a complaint against him and other workers regarding the fact that the workers had slowed down the production and were making 8 units against the required number of 25 units. He further denied that on 19-9-2013, a complaint was received from security supervisor that he was found littering in mysterious circumstances in sensitive areas and he was instigating the other workers to slow down the production. He also denied that due to the unlawful activities, he was issued a chargesheet dated 20-9-2013. He denied that Mrs. Pavneet Miglani was appointed as an enquiry officer to conduct the enquiry against him. He further denied that a proper and fair enquiry

was conducted against him and on the conclusion of the enquiry his services were terminated. He also denied that he refused to accept the enquiry report. He denied that a cheque of Rs. 26145/- was issued to him which included one month's pay and compensation.

10. On the other hand, the respondent has examined two RWs. RW-1 Shri Chattar Singh, Manager HRD tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence authorization letter Ex. R-1, copies of complaints against the petitioner dated 19.9.2013 mark X-1 and mark X-2, copy of chargesheet Ex. R-2, letter of intimation regarding the fact finding enquiry Ex. R-3, letter of appointment of presenting officer Ex. R-4, letter issued by enquiry officer Ex. R-5, enquiry report Ex. R-6, full & final payment mark X-3, sealed envelop Ex. R-7, letter of termination Ex. R-8 alongwith cheque dated 28-9-2013 amounting to Rs. 26145/- Ex. R-9. In cross-examination, he denied that the chargesheet was not served upon the petitioner. He admitted that the chargesheet was not sent to the petitioner by registered post. He denied that the documents have not been attached with the chargesheet. He further denied that letters Ex. R-3 and Ex. R-5 were never served on the petitioner. He admitted that the aforesaid letters were not sent through registered post. He denied that the enquiry report was prepared at the instance of the management as the petitioner was never served in the enquiry proceedings. He admitted that second show cause notice was never issued to the petitioner before terminating his services. He denied that the enquiry report was never sent to the petitioner. He admitted that in the certified standing orders of the company, it is stipulated that if a worker refuses to receive any document, then the management is bound to deliver the same through registered post. He tendered in cross-examination the copy of certified standing orders Ex. R-10. He admitted that the chargesheet and other documents have not been sent to the petitioner at his residential address. He denied that no proper and fair enquiry was conducted against the petitioner.

11. Ms. Pavneet Miglani, Manager HR appeared in to the witness box as RW-2 to depose that she was appointed as enquiry officer to conduct the enquiry against Manjeet Singh *vide* letter dated 21-9-2013 Ex. RW-2/A and she informed Manjeet Singh about the date of enquiry *vide* letter dated 23-9-2013 Ex. RW-2/B but he did not join the enquiry despite intimations and thereafter she started the enquiry in the absence of Manjeet Singh. She further stated that she examined two witnesses who had filed complaints against Manjeet Singh and thereafter she had given the enquiry report Ex. RW-2/C wherein the charges against Manjeet Singh stood proved. In cross-examination, she admitted that Manjeet Singh had not received the chargesheet. She further admitted that letter Ex. RW-2/A was not sent through registered post. She denied that Manjeet Singh was intentionally proceeded against ex-parte and the enquiry was conducted in his absence intentionally. She admitted that letter Ex. RW-2/A and Ex. RW-2/B were not served upon the petitioner. She denied that no complaints were received against Manjeet Singh. She admitted that no notice was served upon Manjeet Singh regarding the enquiry either through registered post or by publication in the newspaper.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was appointed as Tractor Mechanic by the respondent on 11-11-2009 and his services were terminated *vide* order dated 28-9-2013. It is also clear that a chargesheet dated 20-9-2013 Ex. R-2 was issued to the petitioner which is reproduced as under:

“1. That you have been found alongwith Mr. Gurdev Singh-5560, Mr. Balwinder Pal-5395, Mr. Rajesh Kumar-5733, Mr. Dharm Pal- 5755, Mr. Rakesh Kumar-5510 collectively instigating the workers during duty hours to go on slow down and as a result of this you are anti management activities the production has gone to a suicidal extent.

2. That you alongwith Mr. Gurdev Singh-5560, Mr. Balwinder Pal-5395, Mr. Rajesh Kumar-5733, Mr. Dharm Pal-5755, Mr. Rakesh Kumar-5510 have found littering in the

sensitive area where diesel tank is installed in a mysterious and suspicious condition and on asking by the security staff you could not reply satisfactorily.

3. That you're these anti-management activities have been viewed very seriously by the management and you are directed to explain your position within 24 hrs. within the receipt of the charge sheet."

On the basis of the aforesaid chargesheet, an enquiry was ordered to be conducted against the petitioner by appointing Ms. Pavneet Miglani as enquiry officer who gave her fact finding report dated 25.9.2013 Ex. RW-2/C and on the basis of the report of the enquiry officer the respondent terminated the services of the petitioner. The case of the petitioner is that the respondent never served any show cause notice/chargesheet upon the petitioner and the enquiry was conducted by the enquiry officer behind the back of the petitioner. The further case of the petitioner is that he was never served with the enquiry report and second show cause notice and the order of the respondent regarding his termination is null & void. Now, the question which arises for consideration before this Court is as to whether the action of the respondent was illegal and unjustified in terminating the services of the petitioner. It is a settled legal proposition that a workman against whom the misconduct is alleged cannot be dismissed unless a proper domestic enquiry is held against him in respect of the alleged misconduct. He cannot be discharged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. The Certified Standing Orders of the respondent Ex. R-10 also provides for holding an enquiry in accordance with the principles of natural justice against the workman against whom any misconduct is alleged. However, in the present case, from the perusal of the record it has become clear that no chargesheet was served upon the petitioner. RW-1 Shri Chattar Singh admitted in his cross-examination that the chargesheet was not sent to the petitioner through registered post. Though, the case of the respondent is that the petitioner refused to accept the chargesheet and as per clause 33 of the Certified Standing Orders, if the workman refuses to receive any document, its service on him, shall be deemed to have been duly effected on being placed on the unit notice board at the main gate with an endorsement to the effect of the workman's having refused to receive it. However, in the present case though there is an endorsement on the chargesheet Ex. R-2 that the petitioner had refused to receive the same, however, to prove this fact no witness has been examined by the respondent in whose presence he refused to accept the same. Furthermore, it has also become clear that neither the letter of intimation regarding the fact finding enquiry Ex. R-3 nor the letter of the enquiry officer Ex. R-5 was ever served upon the petitioner. It has been admitted by RW-1 that the aforesaid letters were not sent to the petitioner through registered post. He further stated in cross-examination that the petitioner had refused to receive the aforesaid letters. However, to prove this fact no witness has been examined by the respondent in whose presence the petitioner had refused to accept the same. It has also been admitted by RW-1 that second show cause notice was never issued to the petitioner before terminating his services. Similarly, from the perusal of the record it has become clear that even the enquiry report was not served upon the petitioner. RW-1 admitted that the enquiry report was not sent to the petitioner through registered post. However, he stated that the petitioner was called upon to receive the enquiry report but he has refused to receive the same but no witness has been examined by the respondent to prove this fact that in whose presence the petitioner had refused to receive the same. RW-2 enquiry officer also admitted that the petitioner had not received the chargesheet. She further admitted that letter Ex. RW-2/A regarding the appointment of enquiry officer and letter Ex. RW-2/B written by her regarding the intimation of date of enquiry were not sent through registered post. She also admitted that the letter Ex. RW-2/A regarding the appointment of enquiry officer and letter Ex. RW-2/B were not served upon the petitioner. She also admitted that no notice was served upon the petitioner regarding the enquiry either through registered post or by publication in the newspaper. The case of the respondent is that, the letter of termination Ex. R-8 was sent to the petitioner through registered envelope Ex. R-7 but

the perusal of envelope Ex. R-7 in which the letter of termination Ex. R-8 was sent clearly shows that the same was not served upon the petitioner as there is an endorsement of postal authorities that the petitioner was not available at the given address and the same was sent back to the respondent by the postal authorities. Therefore, the perusal of the aforesaid facts would clearly show that neither the chargesheet was served upon the petitioner nor the letter regarding intimation of the enquiry was ever served upon the petitioner. Furthermore, it has also become clear that second show cause notice, enquiry report and letter of termination were also not served upon the petitioner. Therefore, all these facts would clearly show that the enquiry was conducted behind the back of the petitioner and no reasonable opportunity of being heard was given to the petitioner to present his case before the enquiry officer. The enquiry conducted against the petitioner is in flagrant violation of the principles of natural justice. Hence, the enquiry report Ex. RW-2/C is quashed and set aside being null and void.

13. There can be no dispute about the fact that the respondent was entitled to lead evidence on merits before this Court to prove the misconduct of the petitioner in case the enquiry was found to be held in violation of the principles of natural justice. However, in the present case the respondent has failed to lead any evidence to prove the alleged misconduct of the petitioner before this Court as alleged in the chargesheet Ex. R-2. No evidence has been led by the respondent to prove that the petitioner alongwith other workers collectively instigated the workers during duty hours to go on slow down and there is also no evidence on record to suggest that the petitioner alongwith other workers have been found littering in the sensitive area where diesel tank was installed in a mysterious and suspicious condition. Therefore, in view of the fact that the domestic enquiry conducted against the petitioner was violative of the principles of natural justice and also in view of the fact that the alleged misconduct has not been proved before this Court by the respondent, it can safely be held that the dismissal of the petitioner Manjeet Singh *vide* dismissal letter dated 28.9.2013 is illegal and unjustified. Since, the petitioners S/Shri Vikram Singh and Gurdev Singh have failed to file any claim petition and also failed to lead any evidence in support of their case arising out of the reference and the petitioner Ashwani Kumar failed to lead any evidence in support of his claim, it cannot be said that their services have been terminated illegally without complying with the provisions of the Act. Accordingly, this issue is decided in favour of the petitioner Manjeet Singh and against the respondent. However so far as the issue with respect to the termination of the services of other petitioners namely Vikram Singh, Gurdev Singh and Ashwani Kumar is concerned, the same is answered against them as they have failed to appear before this Court and to lead evidence in support of their case.

*Issue No. 2 :*

14. Since I have held under issue No.1 above that the termination of services of the petitioner Manjeet Singh by the respondent without following the provisions of the Act is illegal and unjustified. Therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

15. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

16. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

17. In the present case there is no evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner Manjeet Singh is not entitled to any back-wages. Accordingly, issue No. 2 is partly decided in favour of the petitioner Manjeet Singh and against the respondent. However, this issue with respect to the entitlement of service benefits of other petitioners namely Vikram Singh, Gurdev Singh and Ashwani Kumar becomes redundant.

*Issue No. 3 :*

18. In support of this issue no specific evidence has been led by the respondent. Therefore, in the absence of any evidence on record, this issue is decided in favour of the petitioner Manjeet Singh and against the respondent.

*Issue no. 4 :*

19. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner Manjeet Singh and against the respondent.

*Relief.*

As a sequel to my above discussion and findings on issues No.1 to 4, the claim of the petitioner Manjeet Singh succeeds and is hereby partly allowed and the petitioner Manjeet Singh is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner Manjeet Singh is not entitled to back wages as such the reference is ordered to be answered in favour of the petitioner Manjeet Singh and against the respondent. So far as the reference pertaining to other petitioners namely Vikram Singh, Gurdev Singh and Ashwani Kumar is concerned, the same is answered against them as they have failed to appear before this Court and to lead evidence in support of their case. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 18th Day of April, 2018.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*



**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. No. : 58 of 2013

Instituted on : 6-8-2013

Decided on : 18-4-2018

Ashwani Kumar S/o Shri Deepraj, VPO Jarot, Tehsil Nagrota Surian, District Kangra, H.P.  
through Shri J.C. Bhardwaj, President HP AITUC . *Petitioner.*

*Vs.*

M/s Time Techno Plast Ltd., Unit-III, Village Dharampur, P.O. Thana, Tehsil Baddi,  
District Solan, H.P. through its Factory Manager/occupier . *Respondent.*

**Reference under section 10 of the Industrial Disputes Act, 1947**

For petitioner : Shri J. C. Bhardwaj, AR

For respondent : Shri Rahul Mahajan, Advocate

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

**“Whether time to time termination of the services of Shri Ashwani Kumar s/o Shri Deep Raj through Shri J.C. Bhardwaj, President HP AITUC, H.Q. Saproon, District Solan, HP w.e.f. 30-11-2008 by the occupier/Factory Manager M/s Time Techno Plast Ltd., Unit-III, Village Dharampur, P.O. Thana, Tehsil Baddi, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”**

2. In nutshell the case of the petitioner is that he was employed as helper by the respondent company on 25.4.2006 and he remained continue in the employment till 29.12.2008 when his services were terminated illegally without serving any chargesheet and without conducting any enquiry and that too without complying with the provisions of section 25-F of the Industrial Disputes act, 1947 (hereinafter referred as to Act) and even during his entire service tenure he was never served with any explanation call/show cause notice and his work and conduct was more than satisfactory. It is further stated that the respondent company retained good number of junior workmen in the employment in violation of the provisions of sections 25-G and 25-H of the Act whereas the services of the petitioner were removed without affording him any opportunity to defend himself. It is also stated that the petitioner is unemployed since the date of his illegal retrenchment. Against this backdrop, it has been prayed that direction be issued to the respondent management to reinstate the petitioner in the employment from the date of his illegal removal with seniority and continuity alongwith full back wages.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken that the petition is neither competent nor maintainable, abandonment of job by the petitioner and that the petitioner is gainfully employed. On merits, it has been asserted that the petitioner was appointed as peon w.e.f. 1.12.2007 and he was drawing monthly salary of ₹ 3500/- and he himself absented himself from his duty w.e.f. 30.11.2008 and

despite of issuance of letters/notices dated 16.12.2008 and 12.1.2009, he failed to join his duties and the respondent never terminated the services of the petitioner either *w.e.f.* 30.11.2008 as per the terms of reference or from 29.12.2008. It is further asserted that the respondent struck off the name of the petitioner from its rolls as he has failed to turn up to perform his duties, hence, the abandonment of job cannot be said to be termination. It is also asserted that the petitioner is gainfully employed and is earning ₹ 7000/- per month. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reiterated his allegations as made in the claim petition by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 14.9.2015.

- (1) Whether the termination of the services of the petitioner is in violation of the provisions of the Industrial Disputes Act, 1947 as alleged? . . .*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the petition is not maintainable as alleged? . . .*OPR.*
- (4) Whether the petition is barred by delay and latches? . . .*OPR.*
- (5) Relief.

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

<i>Issue No. 1</i>	: No
<i>Issue No. 2</i>	: Becomes redundant.
<i>Issue No. 3</i>	: No
<i>Issue no. 4</i>	: No
<i>Relief</i>	: Reference answered in favour of the respondent and against the petitioner per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1 :*

8. The AR for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year and in twelve calendar months preceding his termination. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act.

9. On the other hand learned counsel for the respondent contended that the respondent never terminated the services of the petitioner and he himself abandoned the job at his own sweet will and despite issuance of letters/notices to the petitioner asking him to join his duties immediately, he failed to join as such the respondent struck off the name of the petitioner from the rolls of the company.

10. To prove issue No.1, the petitioner stepped into the witness box as PW-1 to depose that he was engaged in the respondent company on 25.4.2006 as a helper and he remained continued till 30.11.2008 according to the terms of reference but actually he was terminated on 29.12.2008. He further stated that he was not served any show cause notice, no chargesheet was issued against him and no enquiry was held against him before his termination. He also stated that no compensation was paid to him before his termination and he raised the demand notice on 2.1.2009 *vide* Ex. PW-1/A but no action was taken by the respondent and then he made a representation Ex. PW-1/B before the Factory Manager as well as to the Labour Commissioner to clear his dues. He tendered in evidence the postal receipts Ex. PW-1/C and Ex. PW-1/D. In cross-examination, he admitted that the curriculum vitae Ex. RX was signed by him. He further admitted that he was working with Jupiter as Security Supervisor night watch *w.e.f.* the year, 2005 till 2008. He also admitted that from the year, 2008, he is working as security supervisor in various companies till date. He denied that he had left the job at his own from 30.11.2008. He further denied that the respondent had issued him letters mark R-1 and mark R-2. He also denied that he had settled his full & final account with the respondent and a cheque of ₹ 3784/- was also given to him. He denied that since he had left the job at his own, therefore, neither any chargesheet was issued nor any enquiry was conducted against him and his name was struck off from the rolls of the company.

11. On the other hand, the respondent has examined RW-1 Shri Amit Kumar, Manager HR who tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence authority letter Ex. RW-1/B, copy of letter dated 16.12.2008 Ex. RW-1/C and copy of letter dated 12.1.2009 Ex. RW-1/D. In cross-examination, he denied that the notice dated 16.12.2008 Ex. RW-1/C and copy of letter dated 12.1.2009 Ex. RW-1/D were never issued to the petitioner. He admitted that no show cause notice and chargesheet was issued to the petitioner regarding his absenteeism and no enquiry was conducted against him. He denied that the petitioner had never worked with M/s Jupiter company. He further denied that the petitioner was working with Jupiter Company after 30.11.2008. He denied that the petitioner had never worked with United Spare Baddi from the year, 2012 to 2014.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was employed as a Peon by the respondent *w.e.f.* 1.12.2007 and he was drawing monthly salary of ₹ 3500/-. The perusal of the record further reveals that the petitioner himself had abandoned the job as he absented himself from his duties *w.e.f.* 30.11.2008 and thereafter the respondent had issued him letters/notices dated 16.12.2008 Ex. RW-1/C and 12.1.2009 Ex. RW-1/D to resume the duties but despite that he failed to resume his duties as such the respondent struck off his name from the roll of the company. Abandonment of service has not been defined in the Act. In a case titled as **G.T Lad and others Vs. Chemicals and Fibers India Ltd. reported in AIR 1979 SC 582**, the Hon'ble Supreme Court has held that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. **The relevant portion of the aforesaid judgment is reproduced as under:**

**“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same.**

**In Buckingham Co. Vs. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”**

Furthermore, it has been held by the **Hon’ble Apex Court in (2013) 10 Supreme Court Cases 253 titled as Vijay S. Sathaye Vs. Indian Airlines Limited and Ors.** that absence from duty in the beginning may be a mis-conduct but when absence is for a very long period, it may amount to voluntary abandonment of service. The relevant paras 12 to 14 are reproduced as under:

“12. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

“13. In *Jeewanlal (1929) Ltd., Calcutta Vs. Its Workmen*, this Court held as under (AIR p. 1570 para 6):

“.....there would be the class of cases where long unauthorized absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee.”

(See also: *Shahoodul Haque Vs. The Registrar, Co-operative Societies*,

“14. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as "retrenchment" from service. (See: *State of Haryana Vs. Om Prakash*)”.

In the present case, it has been duly proved by the respondent that services of the petitioner have not been terminated rather, he himself abandoned the job with an intention not to join back his duties with the respondent. In his cross-examination, the petitioner admitted that he was working with M/s “Jupiter” as security supervisor night ward *w.e.f.* 2005 till the year, 2008 and from the year 2008 he was working as security supervisor in various companies till date. In cross examination, the learned counsel for the respondent had also put to the petitioner his curriculum vitae Ex. RX which the petitioner had admitted to be duly signed by him. The perusal of curriculum vitae Ex. RX shows that the petitioner was working as a security supervisor night watch from 2005 to 2008 in Jupiter Company, as security supervisor VIGIL security from 2008 to 2012 in Hel Lab., Baddi, District Solan, as security supervisor in SKYLARCK security services from 2012 to 2014 and as security supervisor in Walsons building security services from 2014 till date. Therefore, the curriculum vitae Ex. RX clearly shows that during the period when the petitioner was working as peon with the respondent, he was also working as security supervisor in the company under the name and style of M/s Jupiter in the night shift and thereafter also has been working in the different companies. The petitioner has been gainfully employed in other companies right from the year, 2005 and he himself absented from duties *w.e.f.* 30.11.2008 as such it cannot be said that the

respondent had terminated the services of the petitioner. There is enough evidence on record which shows that the petitioner had left the job on his own with an intention not to join back and has failed to resume his duties even after the issuance of notices dated 16.12.2008 Ex. RW-1/C and 12.1.2009 Ex. RW-1/D by the respondent.

13. Thus, in view of the facts and circumstances of the present case and my foregoing discussion, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 30.11.2008 by the respondent is not illegal and unjustified. Accordingly, issue No.1 is decided in favour of the respondent and against the petitioner.

*Issue No. 2 :*

14. Since, the petitioner has failed to prove issue No.1 above, this issue becomes redundant.

*Issue No. 3 :*

15. In support of this issue, no evidence has been led by the respondent. Moreover, the present claim petition has been filed by the petitioner pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

*Issue No. 4 :*

16. To prove this issue no specific evidence has been led by the respondent which could go to show as to how the present petition is barred by delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

As a sequel to my above discussion and findings on issues No.1 to 4, the claim of the petitioner fails and is hereby dismissed with the result the reference is answered in favour of the respondent and against the petitioner. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 18<sup>th</sup> day of April, 2018.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

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**IN THE COURT OF SHRI SUSHIL KUKREJA, PRESIDING JUDGE, H.P. INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref. no. : 30 of 2015  
Instituted on : 30-7-2015  
Decided on : 18-4-2018

Tarsem Lal s/o Shri Sant Ram, r/o Village Kheda, P.O. Goela Panner, Tehsil Nalagarh District Solan, H.P. through J.C. Bhardwaj, President, HP AITUC HQ Saproon Solan, H.P.

. .Petitioner.

*Vs.*

M/s Indo Farm Equipment Ltd., EPIP Phase-II, Village Thana, P.O. Baddi, District Solan, H.P. through its Factory Manager/Occupier

. .Respondent.

### **Reference under section 10 of the Industrial Disputes Act, 1947**

For petitioner : Shri J. C. Bhardwaj, AR

For respondent : Shri H.R. Thakur, Advocate

### **AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

**“Whether termination of the services of Shri Tarsem Lal s/o Shri Sant Ram, Village Kheda, P.O. Goela Panner, Tehsil Nalagarh, Distt. Solan, H.P. w.e.f. 26.2.2014 by the Employer/Management of M/s Indo Farm Equipment Ltd. EPIP, Phase-II, Village Thana Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by workman, is legal and justified? If not, to what relief of reinstatement & compensation the above aggrieved workman is entitled to from the above management?”**

2. Briefly, the case of the petitioner is that on 1.4.2006 he was appointed in the employment of respondent company as Mechanic and at the time of removal from the employment vide letter dated 26.2.2014, he was drawing salary of ₹ 9200/- per month alongwith other benefits and he remained continued as such till his illegal termination from service and that too during the pendency of reference and further without saving express permission under section 33(1) of the Industrial Dispute Act, 1947 (hereinafter refer to as Act). It is further stated that the order of termination was the pre thought action plan of the respondent as he was an active “Trade Unionist” and was also Organizing Secretary of the workers union and even the respondent management is guilty for non implementation of its own settlement dated 15.2.2014 vide which the petitioner had been absolved from all the previous disciplinary proceedings and he was posted at Rohtak and the petitioner reached at Rohtak to resume his duties on 19.2.2014 but no unit of respondent company was in existence at Rohtak and there after the petitioner returned back to Baddi and reported the management but neither he was allowed to enter the gate of the factory nor he was heard and his services were terminated on 26.2.2014 without any reason and without holding any enquiry. It is also stated that on account of the annual election of workers union, the petitioner was again elected as Organizing Secretary on 24.2.2014 and the union supplied five names of newly elected office bearers including the petitioner to declare them protected workman but after receiving the election proceedings of the union on 25.2.2014, the respondent immediately terminated the services of the petitioner on 26.2.2014 on the basis of withdrawn enquiry. That the respondent management did each and everything to malign the work and conduct of the petitioner due to his trade union activities. That management never supplied the documents with the chargesheet dated 12.11.2013 and even the petitioner was removed against the provisions of section 25 N of the Act. That the work and conduct of the petitioner was excellent and his services were terminated by adopting hire and fire formula. Against this back drop, a prayer has been made that the domestic enquiry conducted by the management be declared null and void and the termination order be set aside

while directing the respondent management to reinstate the petitioner in service with full back wages, seniority and other consequential benefits.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability and concealment of material information. On merits, it has been asserted that the termination of the workman was ordered in view of the settlement dated 15.2.2014. It is further asserted that the petitioner was transferred by the management *vide* letter dated 26.9.2013 but he refused to receive the said letter and a copy of the same was pasted on the notice Board and was also sent to his permanent address but the petitioner started absenting *w.e.f.* 26.9.2013 without any information and permission despite the fact that *vide* letters dated 30.9.2013, 26.10.2013 and 8.11.2013 he was directed to resume his duties but all in vain and thereafter a chargesheet dated 12.11.2013 was issued to him which was sent through registered post and the petitioner was directed to submit his written reply but he failed and a domestic enquiry was ordered and Mr. Aseem Kumar Sharma was appointed as an enquiry officer to conduct the domestic enquiry who submitted his report and *vide* letter dated 22.1.2014 a copy of enquiry report was sent to the petitioner through registered post but no reply was received from petitioner, hence, *vide* letter dated 6.2.2014, his services were terminated. It is further asserted that on 15.2.2014, a settlement under section 18(1) of the Act was arrived at after an illegal strike by the workers and as per clause 1 of the settlement it was agreed that Mr. Tarsem Lal will be re-transferred at the nearest place either in Punjab or Haryana with increase of ₹ 2000/- and the termination letter dated 6.2.2014 was revoked *vide* letter dated 16.2.2014 and in the aforesaid settlement it was agreed that all the persons who have been re-transferred will join their duty at the new place of posting by 17.2.2014 and due to the paucity of time the transfer letter dated 16.9.2014 was offered to petitioner but he refused to receive the same and even he failed to join at transferred place whereas other workmen who were transferred in view of the settlement dated 15.2.2014, joined their duties, hence, his services were terminated *vide* letter dated 26.2.2014 strictly as per agreed clause 1 of settlement dated 15.2.2014 and a cheque of ₹ 25686/- was sent to him which was received by him. It is also asserted that the petitioner has never been any office bearer of the union as no election proceedings were perceived. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder, the petitioner reiterated his allegations as made in the claim petition by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 30.5.2016.

- (1) Whether the termination of the services of the petitioner *w.e.f.* 26.2.2014 by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP.*
- (2) If issue No.1 is proved in affirmative, to what relief and service benefits the petitioner is entitled to? . . .*OPP.*
- (3) Whether the petition is not maintainable as alleged? . . .*OPR.*
- (4) Relief

6. I have heard the learned counsel for the parties and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :—

*Issue No. 1* : Yes

*Issue No. 2* : Entitled to reinstatement in service with seniority and continuity but without back-wages.

*Issue No. 3* : No.

*Relief* : Reference answered in favour of the Petitioner and against the respondent per operative part of award.

### REASONS FOR FINDINGS

*Issues No. 1 :*

8. To prove issue No.1, the petitioner stepped into the witness box as PW-1 and tendered in evidence his affidavit Ex. PW-1/A wherein he reiterated almost all the averments as stated in the claim petition. He also tendered in evidence copy of reference No. 24 of 2014 Ex. P-1, copy of representation made to CMD Ex. P-2, copy of settlement executed between the workers union and the management Ex. P-3, copy of intimation of union election sent to the respondent Ex. P-4, postal receipt Ex. P-4/1, letter of termination Ex. P-5, chargesheet Ex. P-6, reply to chargesheet Ex. P-7 and postal receipt Ex. P-7/1. In cross-examination, he admitted that on 26.9.2013, he was transferred to UP. He denied that he refused to accept the transfer order. He further denied that thereafter he remained absent from duty. He admitted that he received chargesheet dated 12.11.2013. He denied that a domestic enquiry was conducted against him and Shri Aseem Sharma was appointed as an enquiry officer who submitted the enquiry report *vide* which the charges leveled against him stood proved. He admitted that his services were terminated on 6.2.2014. He further admitted that on 15.2.2014 a settlement Ex. P-3 was arrived at between the union and the management and the respondent had agreed to transfer him to Rohtak instead of UP. He also admitted that *vide* the aforesaid settlement Ex. P-3, he was allowed to join till 17.2.2014 at Rohtak. He denied that he had not gone to Rohtak for joining.

9. On the other hand, the respondent has examined two RWs. RW-1 Shri Chattar Singh, Manager HR tendered in evidence his affidavit Ex. RW-1/A wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence the copy of appointment letter Ex. RW-1/B, copy of transfer order alongwith postal receipt Ex. RW-1/C, reminder letters dated 30.9.2013 alongwith postal receipts Ex. RW-1/D and Ex. RW-1/E, letter dated 8.11.2013 alongwith postal receipt Ex. RW-1/F, chargesheet alongwith postal receipt Ex. RW-1/G, letter regarding domestic enquiry alongwith postal receipt Ex. RW-1/H, letter dated 22.1.2014, alongwith postal receipt Ex. RW-1/J, enquiry report Ex. RW-1/K, publication in newspaper Ex. RW-1/L, termination letter alongwith postal receipt Ex. RW-1/M, settlement Ex. RW-1/N, copy of letter dated 16.2.2014 Ex. RW-1/O, termination letter alongwith postal receipt Ex. RW-1/P, copy of standing orders Ex. RW-1/Q, letters dated 20.2.2015, 22.2.2015 and 25.2.2015 mark R-1 to R-3. In cross-examination, he admitted that they have not supplied any document with the chargesheet. He further admitted that after revocation of the transfer order, no enquiry was held against the petitioner. He also admitted that the petitioner did not participate in the domestic enquiry and the enquiry against him was conducted ex-parte. He admitted that second show cause notice was not issued to the petitioner. He denied that the petitioner was not allowed to participate in the enquiry by the respondent. He further denied that the settlement Ex. RW-1/N was not signed by the petitioner.

10. Shri Aseem Sharma, appeared in to the witness box as RW-2 to depose that *vide* letter dated 19.11.2013 Ex. RW-1/H, he was appointed as enquiry officer to conduct the enquiry against



the petitioner and he had intimated the petitioner *vide* letter dated 26.11.2013 Ex. RW-2/A about the enquiry through registered post. He tendered in evidence the postal receipt Ex. RW-2/B and acknowledgement Ex. RW-2/C. He further deposed that the enquiry proceedings were started on 14.12.2013 on which date the management representative had appeared but the petitioner did not appear despite intimation and thereafter he directed the petitioner to appear before him through publication in the news paper *vide* Ex. RW-1/L but despite publication he failed to appear before him, hence, he was proceeded against *ex-parte*. He also stated that he had recorded the statement of witnesses. He tendered in evidence the enquiry proceedings alongwith statements of witnesses Ex. RW-2/D and enquiry report Ex. RW-1/K. In cross-examination, he denied that letter Ex. RW-2/A was sent on the wrong address. He admitted that no letter was issued to the petitioner after letter Ex. RW-2/A. He denied that the newspaper in which the publication was issued is not circulated in the village of the petitioner. He further denied that the petitioner was wrongly proceeded against *ex-parte*. He also denied that the enquiry report Ex. RW-1/K is incorrect and the charges against the petitioner have not been proved in the enquiry.

11. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner was engaged as tractor mechanic on 1.4.2006 and his services were terminated *w.e.f.* 26.2.2014 by the respondent. It is not in dispute that the last drawn salary of the petitioner was ₹ 9200/- per month. The petitioner was transferred by the respondent *vide* letter dated 26.9.2013 Ex. RW-1/C but he refused to receive the said letter and a copy of the same was pasted on the notice board and was also sent on his permanent address through registered post. Thereafter, he started absenting himself *w.e.f.* 26.9.2013 without any intimation and permission and as such he was directed to resume his duties *vide* letter dated 30.9.2013 Ex. RW-1/D, letter dated 26.10.2013 Ex. RW-1/E and letter dated 8.11.2013 Ex. RW-1/F but despite that he failed to report for duties. Thereafter a chargesheet dated 12.11.2013 Ex. RW-1/G was issued to him through registered post wherein he was directed to submit his reply and a domestic enquiry was ordered to be conducted against him *vide* letter Ex. RW-1/A whereby Shri Aseem Kumar Sharma was appointed as an enquiry officer. Thereafter, the enquiry officer had intimated the petitioner through registered post *vide* letter dated 26.11.2013 Ex. RW-2/A to appear before him in enquiry proceedings on 14.12.2013. The aforesaid letter was duly received by the petitioner as per acknowledgement Ex. RW-2/C but despite having been duly served the petitioner had failed to appear before the enquiry officer and then the petitioner was directed to appear before the enquiry officer for 3.1.2014 through publication in the news paper the copy of which is Ex. RW-1/L but despite that the petitioner had failed to appear in the enquiry and as such he was proceeded against as *ex-parte* on 3.1.2014. No cogent and satisfactory evidence has been led by the petitioner that he was not properly served during the enquiry proceedings. RW-2 categorically deposed that when the petitioner failed to appear in the enquiry proceedings despite service, he was proceeded against *ex-parte* on 3.1.2014 and he recorded the statements of witnesses. He also tendered in evidence the enquiry proceedings alongwith statements of witnesses in original Ex. RW-2/D and thereafter he had submitted the enquiry report Ex. RW-1/K before the respondent management. Both RW-1 and RW-2 were cross-examined at length however nothing favourable could be elicited from their lengthy cross-examination which could lead this Court to draw an inference that the petitioner was wrongly proceeded against as *ex-parte*. Therefore, in the absence of any cogent and satisfactory evidence on record, it cannot be said that the petitioner was not properly served and was wrongly proceeded against as *ex-parte*. Hence, the aforesaid facts would clearly show that the petitioner was well aware about the enquiry proceedings which were being conducted against him but he had failed to participate in the enquiry proceedings despite the fact that he was aware about the same. Now, the question which arises for consideration before this Court is as to whether the petitioner can allege violation of principles of natural justice despite being aware about the enquiry proceedings. The Hon'ble Supreme Court in a catena of judgments held that the employee failing to participate in the enquiry proceedings being aware of the enquiry, cannot complain violation of the principles of natural justice. In **AIR 2008 SC (Supl.) 1542, Board of Directors H.P.T.C Vs. K.C**

**Rahi**, it has been held that if an employee does not participate in the enquiry proceedings being well aware of departmental enquiry, he is stopped from raising the question of non-compliance of the principles of natural justice. The relevant portion of the aforesaid judgment is reproduced as under:

“.....The Tribunal also held that from the representation dated 09.08.1993 and 19.10.1993 it would clearly show that the respondent was well aware of the departmental enquiry which was initiated against him, however, he intentionally avoided service of notice and did not participate in the enquiry proceedings and, therefore, he was estopped from raising the question of non-compliance of the principle of natural justice.....”.

Furthermore, **in (2008)-4 SCC 42, Pepsu Road Transport Corporation Vs. Rawel Singh**, it has been held as under:

“15..... We are not entering into correctness or otherwise of the allegations of the Corporation. One thing, however, is certain that in spite of service of show cause notice, the respondent failed to appear at the enquiry and the Enquiry Officer had to proceed with the enquiry in absence of the respondent.

16. Apart from that it is also clear from the record that so far as the charge as to unauthorized absence of the respondent is concerned, the same is duly established from the record. The Enquiry Officer, in our opinion, rightly observed that charges (ii) and (iii) were consequential in nature and based on charge (i) and hence all the charges can be said to have been proved against the respondent. In our judgment, the Labour Court was wholly wrong in holding that enquiry was not fair. To us, it is not a case of not extending an opportunity to the employee but not availing of opportunity by the employee. Therefore, the finding recorded by the Labour Court that the enquiry was vitiated being violative of natural justice and fair play is based on 'no evidence' and must be set aside”.

Similarly, **in (1997) 10 S.C.C 386, Ranjan Kumar Mitra Vs. Andrew Yule & Co. Ltd., and others** it has been observed as under:

“1. In view of the fact that the appellant's services were terminated after an enquiry in which the appellant chose not to participate, we are of the view that the appellant cannot assail his termination on merits even assuming that the writ petition filed by his in the High Court was maintainable. For this reason, it is not necessary to examine the correctness of the High Court's view that the writ petition was not maintainable. The dismissal of the appeal by this Court is, therefore, not to be construed as an expression of any opinion on the merits of the view taken by the High Court on the question of maintainability of the writ petition.”

12. Therefore, in view of the aforesaid decisions of Hon'ble Supreme Court, the petitioner is estopped from raising the plea of non-compliance of principles of natural justice as he had failed to participate in the enquiry despite being aware about the enquiry proceedings.

13. The charges leveled against the petitioner *vide* chargesheet Ex. RW-1/G shows that after the transfer order dated 26.9.2013, the petitioner remained absent *w.e.f.* 26.9.2013 without any prior intimation and permission and he refused to receive the communications of the management and also willfully disobeyed the directions of the respondent. The enquiry officer found him guilty of the misconduct alleged in the aforesaid chargesheet *vide* enquiry report Ex. RW-1/K. The order of termination dated 6.2.2014 shows that the services of the petitioner were terminated on the basis

of the report of the enquiry officer and his services have been dispensed with *w.e.f.* 6.2.2014. The perusal of the record further shows that after the issuance of the termination order dated 6.2.2014, a settlement Ex. RW-1/N under section 18(1) of the Act was arrived at between the workers union and the management on 15.2.2014 and as per clause -1 of the same it was agreed that the petitioner will be re-transferred at nearest place either in Punjab or in Haryana with an increase of ₹ 2000/- and the termination order dated 6.2.2014 was revoked *vide* letter dated 16.2.2014 Ex. RW-1/O with the direction to the petitioner to join his duties at Rohtak Haryana with immediate effect. However, the petitioner has stated in his affidavit by way of evidence that in view of the aforesaid settlement, he immediately went to join at his place of posting at Rohtak but he found that no such unit of respondent company in the name and style of Indo Farm Equipment Ltd., was in existence at Rohtak and therefore he returned back from Rohtak and reported at Baddi where the management of respondent had not allowed him to enter the factory and terminated his services. On the other hand the case of the respondent is that the petitioner was to join his duties by 17.2.2014 which was last date for joining at Rohtak but he failed to abide by the terms and conditions of settlement dated 15.2.2014 and therefore his services were terminated *vide* letter dated 26.2.2014 Ex. RW-1/P in view of clause -1 of the settlement Ex. RW-1/N wherein it has been mentioned that if the workman who were re-transferred failed to join their duties at transferred place, their services would stand terminated. Now, the next question which arises for consideration before this Court is as to whether the punishment imposed upon the petitioner is disproportionate to the gravity of the misconduct and whether this Court can interfere in the punishment imposed by the respondent. In **(2005) 3 S.C.C 134, Mahindra and Mahindra Ltd. Vs. N. B Narawade**, it has been held by the Hon'ble Supreme Court that after introduction of section 11 –A in the Industrial Disputes Act certain amount of discretion is vested with the Labour Court/Tribunal in interfering with the quantum of punishment whereby the concerned workman is found guilty of the misconduct. The relevant portion of the aforesaid judgment is reproduced as under:

“20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court/Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.” (emphasis supplied).

In the present case as observed earlier that after the transfer order dated 26.9.2013, the petitioner remained absent from his duties without any prior permission from the respondent and after holding the enquiry his services were terminated *vide* termination order dated 6.2.2014 but the same was revoked *vide* letter dated 16.2.2014 with the directions to the petitioner to join his duties at Rohtak. However, the petitioner failed to join his duties at Rohtak and thereafter his services were again terminated *vide* letter dated 26.2.2014. It is the admitted case of the respondent that after revocation of the transfer order no fresh enquiry was held against the petitioner. Admittedly, the petitioner had been engaged as mechanic and not in a sensitive post and this is not the case of dishonesty, misappropriation or using abusive language against the superior officers which require an extreme penalty of dismissal. Moreover, the past record of the petitioner is clean and no other misconduct has been pointed out against him. Furthermore, the respondent in para 2 of its reply had categorically averred that even though the management has terminated the services of Mr. Tarsem

Lal in view of clause-1 of the settlement but the management is still ready to take the workman on duty but without back-wages if he joins his duties at Rohtak.

14. Therefore, looking into the charges leveled against the petitioner and keeping in view his past service record and also keeping in view the fact that the respondent is still ready to take back the petitioner on duty, the punishment of dismissal of the services of the petitioner *w.e.f.* 26.2.2014 is hereby set aside and quashed.

15. Thus, having regard to entire evidence on record and in view of my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner *w.e.f.* 26.2.2014 by the respondent is illegal and unjustified. Accordingly, issue No.1 is decided in favour of the petitioner and against the respondent.

*Issue No. 2.*

16. Since I have held under issue No.1 above that the termination of services of the petitioner by the respondent is illegal and unjustified, therefore, the petitioner is held entitled to reinstatement in service with seniority and continuity.

17. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the AR for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza**, the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla** that full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

18. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

“16.....When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim.....”

19. In the present case there is no cogent and satisfactory evidence on record to suggest that the petitioner was not gainfully employed after his termination. The petitioner has failed to discharge his burden by placing any concrete material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (*supra*), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue No. 2 is partly decided in favour of the petitioner and against the respondent.

*Issue No. 3 :*

20. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

*Relief.*

As a sequel to my above discussion and findings on issues No.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 18th Day of April, 2018.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

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**IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, SHIMLA**

Ref No. : 63 of 2015  
Instituted on : 1-9-2015  
Decided on : 6-4-2018

Rajeev Kumar Songra s/o Shri K. D. Songra, r/o Village Palty, P.O. Berdhin, Tehsil Ghumarwin, District Bilaspur, H.P. Through: J. C. Bhardwaj, President HP AITUC, H.Q. Saproon, Solan, H.P. . .*Petitioner.*

*Vs.*

M/s Super Multi-Colour Printers (P) Ltd., Village Kishanpura, Tehsil Baddi, District Solan, Himachal Pradesh. Through, its Managing Director . .*Respondent.*

**Reference under section 10 of the Industrial Disputes Act, 1947**

For petitioner : Shri J.C Bhardwaj, AR  
For respondent : Already *ex-parte*

**AWARD**

The reference for adjudication, sent by the appropriate government, is as under:

**“Whether termination of the services of Shri Rajeev Kumar Songra s/o Shri K.D. Songra, Village Palty, P.O. Berdhin, Tehsil Ghumarwin, Distt. Bilaspur, H.P.,**

**employed as Quality Control Assistant, during May, 2014, by the management of M/s Super Multi-Colour Printers (P) Ltd., Village Kishanpura Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by workman, is legal and justified? If not, to what relief of reinstatement & compensation the above aggrieved workman is entitled to from the above management?"**

2. Briefly, the case of the petitioner is that during the month of July, 2013 he was employed by the respondent company as QC Assistant and the duties which he was performing was of non-managerial and non-administrative in nature and he had performed his duties till 9.5.2014 when his services were illegally terminated. It is further stated that the petitioner was a skilled workman and is duly covered under the definition of a "workman" under section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred as to Act). It is also stated that the petitioner had worked for more than 240 days in every calendar year during the tenure of his service, hence, his termination without compliance of the mandatory and statutory norms under section 25-F of the Act is violative of the law of natural justice and even the management had never paid the retrenchment compensation as per law and the management had followed the principle of "Hire and Fire" as the petitioner was terminated on flimsy grounds which amounts to illegal retrenchment under section 2-OO of the Act. That the junior workmen in the same company were retained and fresh hands have been employed in violation of sections 25-G and 25-H of the Act without giving any preference to the petitioner for re-engagement. That the petitioner is still unemployed from the date of his illegal removal from service and his integrity has been made doubtful in the eyes of one and all and shall remain so in future also in view of the unwarranted removal and adverse remarks. Against this back-drop a prayer has been made that the respondent be directed to re-engage the petitioner in the employment of the respondent retrospectively since the date of his illegal termination with full back-wages, seniority and other consequential service benefits throughout with costs.

3. By filing reply, the respondent contested the claim of the petitioner wherein preliminary objections have been taken *qua* maintainability, that the claim filed by the petitioner is totally misuse of the provisions of the Act, suppression of material facts from this Court, maintainability and abandonment of job by the petitioner. On merits, it has been asserted that the petitioner was appointed on 1.7.2013 by the respondent as Assistant Manager in quality control department and he was performing managerial and administrative functions and other workers were working under him, hence, he was not a workman under the Act. It is denied that the services of the petitioner have been illegally terminated whereas he had never turned for the job after 9.5.2014 and a show cause notice was issued to him on 13.5.2014 and even earlier he was served with show cause-*cum*-warning letter dated 30.1.2014 regarding his misbehavior but he continued with his negligence and misbehavior. It is also asserted that on 9.5.2014, the petitioner while running away from the premises of the respondent company, manhandled and abused the General Manager of the company and the Security Officers. That the petitioner was asked telephonically to come and receive his legal dues but he never came back and cleared his dues instead he opted to join another company which was pre determined. It is denied that the petitioner was retrenched from service. It is asserted that the petitioner was severally called telephonically to join the duties and file the reply to the show cause notice but he remained reluctant and did not bother to join the duties or file reply to show cause notice dated 9.5.2014. Moreover, it is specifically mentioned in the appointment letter that the services of the petitioner are liable to be terminated without any notice or salary in lieu thereof if during his service he is found to be negligent in his duties or he misconducts and is found indulged in the activities etc. about which the management feels that the duties/responsibilities has not been properly served by him. It is denied that the sections 25-G and 25-H are applicable on the petitioner. It is asserted that the petitioner had joined some other company in

the Industrial area of Nalagarh and is earning handsomely, hence, he is not entitled for any relief from this Court. The respondent prayed for the dismissal of the claim petition.

4. By filing rejoinder the petitioner reiterated his allegations as made in the claim petition by denying those of the respondent.

5. On the pleadings of the parties, the following issues were framed on 4.1.2017 :—

- (1) Whether the termination of the services of the petitioner by the respondent during May, 2014 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? . . .*OPP*.
- (2) If issue No.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . . .*OPP*.
- (3) Whether the petition is not maintainable as alleged? . . .*OPR*.
- (4) Whether the petitioner has left the job on his own as alleged? . . .*OPR*.
- (5) Relief.

6. I have heard the AR for the petitioner and have also gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under :—

*Issue No. 1* : Yes.

*Issue No. 2* : Entitled to lump sum compensation.

*Issue No. 3* : No.

*Issue No. 4* : No.

*Relief* : Reference answered in favour of the petitioner and against the respondent per operative part of award.

### REASONS FOR FINDINGS

*Issues no.1 & 4 :*

8. Being interlinked and correlated, both these issues are taken up together for decision.

9. The AR for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the junior persons to the petitioner are still working with the respondent and fresh workers have been engaged in violation of the provisions of section 25-G and 25-H of the Act. He also contended that the petitioner was a skilled workman and is duly covered under the definition of a “workman” under section 2(s) of the Act.

10. To prove issue No.1, the petitioner stepped into the witness box as PW-1 to depose that he was engaged with the respondent company during the month of July, 2013 as Quality Control Assistant and worked till 9.5.2014 and his duties were non-managerial and non-administrative and

he was performing technical duties of skilled workman. He further stated that he had worked for more than 240 days preceding his termination and neither any notice nor compensation was paid to him before his termination. He also stated that he was not paid earned wages for the month of April and May 2014 by the respondent and neither any chargesheet was issued to him nor any enquiry was conducted against him by the respondent and his services were terminated without affording him any opportunity. In cross-examination, he denied that show cause notice dated 9.5.2014 was handed over to him but he refused to receive the same in the factory premises. He further denied that the show cause notice was also issued to him through registered post on 13.5.2014. He denied that he was appointed as Assistant Manager (Quality Control). He also denied that on 9.5.2014 after refusing to accept the show cause notice, he left the factory premises after misbehaving and pushing security guard. He denied that he had ever received warning letter dated 30.1.2014 mark RY. He denied that many warnings were issued to him. He stated that now days he is working as Quality Manager at Skanem Interlabels *w.e.f.* jan., 2015. He denied that he had left the job at his own and his services were never terminated.

11. Before, I proceed further it is important to mention here that despite having availed several opportunities the respondent failed to lead any evidence in defence, hence, the evidence of respondent was closed *vide* order dated 12.9.2017 and thereafter the learned counsel for the respondent pleaded “no instructions” and had withdrawn his power of attorney on behalf of respondent. Then, this Court issued fresh notice to the respondent which was duly served but none appeared on behalf of the respondent, hence, *vide* order dated 14.3.2018, the respondent was proceeded against *ex-parte*.

12. I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof, it has become clear that the petitioner had worked with the respondent company as Assistant Manager (Quality Control) *w.e.f.* 1st July, 2013 till 9.5.2014. The plea which has been taken by the respondent in its reply is that since the petitioner was performing his duties in the capacity of Assistant Manager in quality control department and discharging the supervisory and managerial functions, therefore, his case does not fall under the category of workman as prescribed in section 2 (s) of the Act. Now, this Court is required to ascertain as to whether the petitioner falls within the category of workman or not as per section 2 (s) of the Act. At this juncture, it would be relevant to re-produce section 2 (s) of the Act, which reads as under :

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”



13. It is a settled provision of law that in determining as to whether a person is a workman or not, the Court has to principally see the main or substantial work for which he was employed. Neither the designation nor any incidental work done by him will get him out-side the preview of the Act. **The Hon'ble Supreme Court in (1994) 5 S.C.C 737, titled as H.R Adyanthaya and others Vs. Sandoz (India) Ltd., and another** has held that for an employee to be covered by the definition of workman he must be employed in any industry to do any manual, un-skilled, skilled, technical, operational, clerical or supervisory work. If he falls within these categories, it has then to be seen whether he comes within any of the four excluded categories mentioned in section 2 (s) of the Act. The relevant portion of the aforesaid judgment reads as under:

24..... Hence, the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions of the definition. We reiterate the said interpretation.”

14. **In case reported in 2006-III LLJ (767) titled as Anand regional Co.op. Oil Seedsgrowers Union Ltd. Vs. Shailesh Kumar Harshad Bhai Shah**, the Hon'ble Supreme Court has observed as under:

“For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.”

“Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being incharge of section alone and that too it being a small one and relating to quality control would not answer the test.”

**In Rajinder Sharma (deceased) through his LRs Udesb and others Vs. Managing Director and another, CWP No. 1929 of 2012**, our own Hon'ble High Court has held that the designation and the name of the post is not material while dealing with the question of person being a “workman”. The relevant portion of the aforesaid judgment is reproduced as under:

“7. It is equally well settled principle of law that designation or name of the post is not material while dealing with the question of person being a “workman”. The main duties which an employee is required to perform is the criteria to determine whether he falls within the category of workman or not. Reference in this regard can conveniently be made to the judgment of the Hon'ble Supreme Court in S.K. Verma Vs. Mahesh Chandra and another (1983) 4 SCC 214, Ved Prakash Gupta Vs. M/s Delton Cable India (P) Ltd. (1984) 2 SCC 569 and National Engineering Industries Ltd. Vs. Shri Kishan Bhageria and others AIR 1988 SC 329”.

15. Therefore, the ratio of the aforesaid decisions makes it clear that for determining the question as to whether a person employed in an industry is a workman or not, the nature of the work performed by him is the main determining factor and his designation is immaterial. In the present case, the petitioner was appointed as Assistant Manager (Quality control) Assistant *w.e.f.* 1st July, 2013 as per appointment letter Mark RX and he worked as such till the date of his

termination i.e 9.5.2014. In his statement as PW-1, the petitioner deposed that he was performing technical duties of skilled workman and his duties were not managerial and administrative. In cross-examination, he denied that his functions were purely managerial and administrative in nature. He was cross-examined at length, however, nothing favorable could be elicited from his lengthy cross-examination. On the other hand the respondent has failed to rebut the evidence led by the petitioner despite having been granted several opportunities. The respondent has failed to lead any evidence in support of its case and also failed to prove on record that the work which the petitioner was performing was of Managerial in nature. Therefore, in view of the evidence led by the petitioner, it can safely be held that the petitioner was not discharging the supervisory work. Merely because the petitioner had been designated as Assistant Manager (Quality Control), it cannot be said that he was discharging the managerial and supervisory functions. The petitioner was working as Assistant Manager (Quality Control) but he was not having any authority to appoint anyone or to initiate enquiry against any person. The duties of the petitioner were of manual nature and he was not performing any supervisory and managerial function. Hence, in view of the evidence led by the petitioner before this Court, it can safely be held that the petitioner was a workman as defined under section 2 (s) of the Act.

16. The further case of the respondent is that the services of the petitioner were never terminated by the respondent rather he himself ran away from the company by manhandling and abusing the General Manager of the respondent which is a serious misconduct. However, no enquiry has been conducted against the petitioner by the respondent in order to prove the alleged misconduct. It is a settled legal proposition that a workman against whom misconduct is alleged cannot be dismissed from service unless he has been given reasonable opportunity of being heard and a proper domestic enquiry is held against him in respect of alleged misconduct. In the present case admittedly the petitioner had completed 240 days in preceding 12 months before his termination and neither any chargesheet was issued to the petitioner nor any domestic enquiry was held before terminating him from service. In **D. K Yadav Vs. M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221**, the Hon'ble Apex Court has held as under:

*“Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service.”*

In a recent judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

“8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:

9.....

10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.

11.....

12.....

13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

In the instant case, the petitioner had worked continuously with the respondent from 1st July, 2013 till 9.5.2014. Therefore, it was incumbent upon the respondent to have conducted the enquiry against the petitioner prior to his termination. However, no enquiry was held before terminating his services on the basis of the alleged misconduct. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice.

17. The further case of the respondent is that the petitioner had left the job and run away from the company and did not turn up for his duties. However, there is no *iota* of evidence on record which could go to show that the petitioner had left the job on his own as no notice or letter regarding abandonment of the job by the petitioner is placed on record by the respondent. Therefore, in the absence of any evidence on record, inference cannot be drawn that the petitioner had abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it has been held that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. The relevant paragraph of the aforesaid judgment is reproduced as under:

**“From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. vs. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.”**

Hence, in view of the law laid down (*supra*), and also in the absence of any evidence on record that the petitioner intended to abandon the service, it cannot be said that the petitioner had left the job at his own.

18. From the closer scrutiny of the record, it is clear that the petitioner was engaged in the month of July, 2013 and he worked till 9.5.2014. In his statement as PW-1, the petitioner categorically deposed that he had worked continuously and had completed 240 days in the preceding 12 calendar months. The respondent has failed to lead any evidence to rebut the case of the petitioner despite having been availed several opportunities. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondents have failed to comply with the provisions of section 25-F of the Act. In **(2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

“34. ....The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant-Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law.”

19. In the present case also as observed aforesaid, the respondent has failed to comply with the provisions of section 25-F of the Act before terminating his services. Hence, In view of the law laid down by the Hon'ble Supreme Court (*supra*) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner *w.e.f.* May, 2014 by the respondent without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

20. The learned counsel for the petitioner next contended that while terminating the services of the petitioner, the respondent has violated the provisions of section 25-G and 25-H of the Act as his juniors are still continuing with the respondent company. However, to prove this fact no cogent and satisfactory evidence has been led by the petitioner, hence, in the absence of any evidence, it cannot be said that the respondent has violated the provisions of section 25-G and H of the Act. Accordingly, both the aforesaid issues are decided in favour of the petitioner and against the respondent.

#### *Issue No. 2 :*

21. Since, the petitioner has succeeded in proving issue No. 1 above, now it has to be seen as to what service benefits the petitioner is entitled to. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC**, has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

22. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

“It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice.”

23. In the present case, even though the termination of the petitioner is held to be illegal but his reinstatement will not be appropriate relief as in view of the allegations made against the

petitioner by the respondent, there had been a bad blood between the parties. Moreover, the petitioner as PW-1 admitted in cross-examination that now a days he is working as Quality Manager at Skanem interlabels *w.e.f.* Jan., 2015. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner.

24. It is not disputed that the petitioner was the regular and confirmed employee of the respondent company and his service was of permanent character. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent and it would be quite reasonable and justified if lump sum compensation of Rs. 50,000/- (Fifty Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner.

*Issue No. 3 :*

22. In support of this issue, no evidence has been led by the respondent. Moreover, the present claim petition has been filed by the petitioner pursuant to the reference sent by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

*Relief :*

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent is directed to pay Rs. 50,000/- (Rs. Fifty Thousand only), as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 6th Day of April, 2018.

Sd/-  
(SUSHIL KUKREJA)  
*Presiding Judge,*  
*Industrial Tribunal-cum-Labour Court, Shimla.*

**22.04.2018**

Present: Sh. Rohit Sharma, Ld. Csl. for petitioners

Sh. Balwant Singh, AR for respondent No. 2

The case has been taken up by the National Lok Adalat today. It is stated by Ld. Csl. for the petitioners that all the workers have entered into a settlement *vide* settlement Ex. C-1 with the respondents *vide* which the demands at serial No 1, 2, 3, 9, 10, 11, 12 and 13 raised *vide* demand charter dated 19.05.2014 have been settled, the copy of which is enclosed with the reference. He further stated that Sita Ram has received a demand draft in the sum of Rs.85050/-, Harish Kumar has received a demand draft in the sum of Rs. 72360/-, Yagya Dutt has received a demand draft in the sum of Rs. 32130/-, Sita Devi has received a demand draft in the sum of Rs.66825/-, Leela devi has received a demand draft in the sum of Rs. 43740/- and Usha Devi has received a demand draft

in the sum of Rs. 22950/-. Now, the workers have no dispute with the respondents arising out of reference No. 35/2015 and the same may be decided in terms of settlement Ex.C-1.

*Vide* separate statement recorded today, Mr. Balwant Singh, AR for the respondent No. 2 also stated that all the workmen mentioned in reference petition No. 35/2015 have settled the matter with the respondents *vide* settlement Ex.C-1. Hence, the reference petition may be decided in terms of the aforesaid settlement Ex. C-1. Therefore, in view of the aforesaid statements of the Ld. Csl. for the petitioners and AR for the respondent No. 2, we are satisfied that a lawful compromise has been arrived at between the parties in terms of settlement Ex.C-1. Therefore, the reference is answered in terms of the statements of the parties and also in terms of settlement Ex.C-1, which shall form a part of this order/award. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to record room.

Announced:  
22.04.2018

(T. R. AZAD)  
Member

(M. L. KAUSHAL)  
Member

(SUSHIL KUKREJA)  
Chairman  
National Lok Adalat

### आबकारी एवं कराधान विभाग

अधिसूचना सं. 23/2018-राज्य कर (दर)

शिमला-2, 20 सितम्बर, 2018

**संख्या: ई.एक्स.एन.-एफ(10)-24/2018.**—राज्यपाल, हिमाचल प्रदेश, हिमाचल प्रदेश माल और सेवा कर अधिनियम, 2017 (2017 का 10) की धारा 11 की उपधारा (3) के तहत प्रदत्त शक्तियों का प्रयोग करते हुए, परिषद् की सिफारिशों के आधार पर तथा इस बात से संतुष्ट होते हुए कि संख्या ई.एक्स.एन.-एफ(10)-15/2017 द्वारा तारीख 30 जून, 2017 को राजपत्र, हिमाचल प्रदेश में प्रकाशित अधिसूचना सं0 12/2017-राज्य कर (दर) तारीख 30 जून, 2017 के क्षेत्र विस्तार और उसकी प्रयोज्यता को स्पष्ट करने के लिए ऐसा करना आवश्यक है, एतद्वारा उक्त अधिसूचना में, सारणी में क्रम संख्या 41 के समक्ष, कॉलम 3 में निम्नलिखित स्पष्टीकरण को अंतःस्थापित करते हैं, यथा:—

**“स्पष्टीकरण.**—इस छूट के उद्देश्य के लिए, ऐसे निकाय में केन्द्र सरकार, राज्य सरकार या संघ राज्य क्षेत्र का सीधे तौर पर या ऐसे किसी निकाय के माध्यम से जो कि पूर्णतया केन्द्र सरकार, राज्य सरकार या संघ राज्य क्षेत्र के स्वामित्व में आता हो, 50% या इससे अधिक का स्वामित्व अवश्य होना चाहिए।”

आदेश द्वारा,  
जगदीश चन्द्र शर्मा,  
प्रधान सचिव (आबकारी एवं कराधान)।

**टिप्पण.**— प्रधान अधिसूचना संख्या 12/2017-राज्य कर (दर) तारीख 30 जून, 2017 संख्या ई.एक्स.एन.-एफ(10)-15/2017 द्वारा तारीख 30 जून, 2017 को राजपत्र, हिमाचल प्रदेश में प्रकाशित की गई थी और अन्तिम बार अधिसूचना सं0 14/2018-राज्य कर (दर) तारीख 27 जुलाई, 2017 द्वारा संशोधित और संख्या ई.एक्स.एन.-एफ(10)-24/2018 द्वारा तारीख 27 जुलाई, 2018 को राजपत्र में प्रकाशित की गई थी।

[Authoritative English text of this Department Notification No. EXN-F(10)-24/2018 dated 20-09-2018 required under clause (3) of Article 348 of the Constitution of India].

## EXCISE AND TAXATION DEPARTMENT

NOTIFICATION No. 23/2018—State Tax (Rate)

*Shimla-2, the 20<sup>th</sup> September, 2018*

**No. EXN-F(10)-24/2018.**—In exercise of the powers conferred by sub-section (3) of section 11 of the Himachal Pradesh Goods and Services Tax Act, 2017 (10 of 2017), the Governor of Himachal Pradesh, on the recommendations of the Council, and on being satisfied that it is necessary so to do for the purpose of clarifying the scope and applicability of the notification of the Government of Himachal Pradesh, No.12/2017-State Tax (Rate), dated 30<sup>th</sup> June, 2017, published in the Gazette of Himachal Pradesh, *vide* number EXN-F(10)-15/2017, dated the 30<sup>th</sup> June, 2017, hereby inserts the following Explanation in the said notification, in the Table, against serial number 41, in column (3), namely:—

*“Explanation.*—For the purpose of this exemption, the Central Government, State Government or Union territory shall have 50 per cent or more ownership in the entity directly or through an entity which is wholly owned by the Central Government, State Government or Union territory.”.

By order,  
JAGDISH CHANDER SHARMA,  
*Pr. Secretary (E&T).*

*Note.*— The principal notification No.12/2017-State Tax (Rate), dated the 30<sup>th</sup> June, 2017, was published in the Gazette of Himachal Pradesh, *vide* number EXN-F(10)-15/2017, dated the 30<sup>th</sup> June, 2017 and was last amended by notification No. 14/2018-State Tax (Rate), dated the 27<sup>th</sup> July, 2018 published *vide* number EXN-F(10)-24/2018, dated the 27<sup>th</sup> July, 2018.

## EXCISE AND TAXATION DEPARTMENT

### CORRIGENDUM

*Shimla-2, the 20<sup>th</sup> September, 2018*

**No. EXN-F(10)-24/2018.**—In the notification No. 10/2017-State Tax, dated the 30<sup>th</sup> June, 2017, published in the Gazette of Himachal Pradesh, *vide* number EXN-F(10)-14/2017 dated 30<sup>th</sup> June, 2017,—

At page 3006:—

- (i) in Para No. 4, before the words “**Every electronic commerce**” the number and sign “(1)” shall be read “(2)”;
- (ii) in Para No. 5, before the words “**Every registered person**” the number and sign “(2)” shall be read “(3)”.

By order,  
JAGDISH CHANDER SHARMA,  
*Principal Secretary (E&T).*

**CHANGE OF NAME**

I, Owais Khan, age about 28 years s/o Sh. Tahir Khan s/o Sh. Mohammad Khan Pathan, r/o House No. 2263/8, Mohalla Gunnu Ghat, The Mall Road, Nahan, District Sirmaur (H.P.) do hereby solemnly affirm and declare through this public notice that my recorded name in School, College & University certificates is Owais Khan. But, my Gotra/Sub-Caste Pathan which is recorded in Sajra Nasb of owners as per Jamabandi of 2009-10 issued in the name of my ancestors. So, my Gotra/Sub-Caste *i.e.* Pathan be affixed with my name Owais Khan and will be called as Owais Khan Pathan in future for all purposes and all records.

OWAIS KHAN PATHAN,  
*s/o Sh. Tahir Khan s/o Sh. Mohammad Khan Pathan,  
r/o House No. 2263/8, Mohalla Gunnu Ghat, The Mall Road,  
Nahan, District Sirmaur (H.P.).*